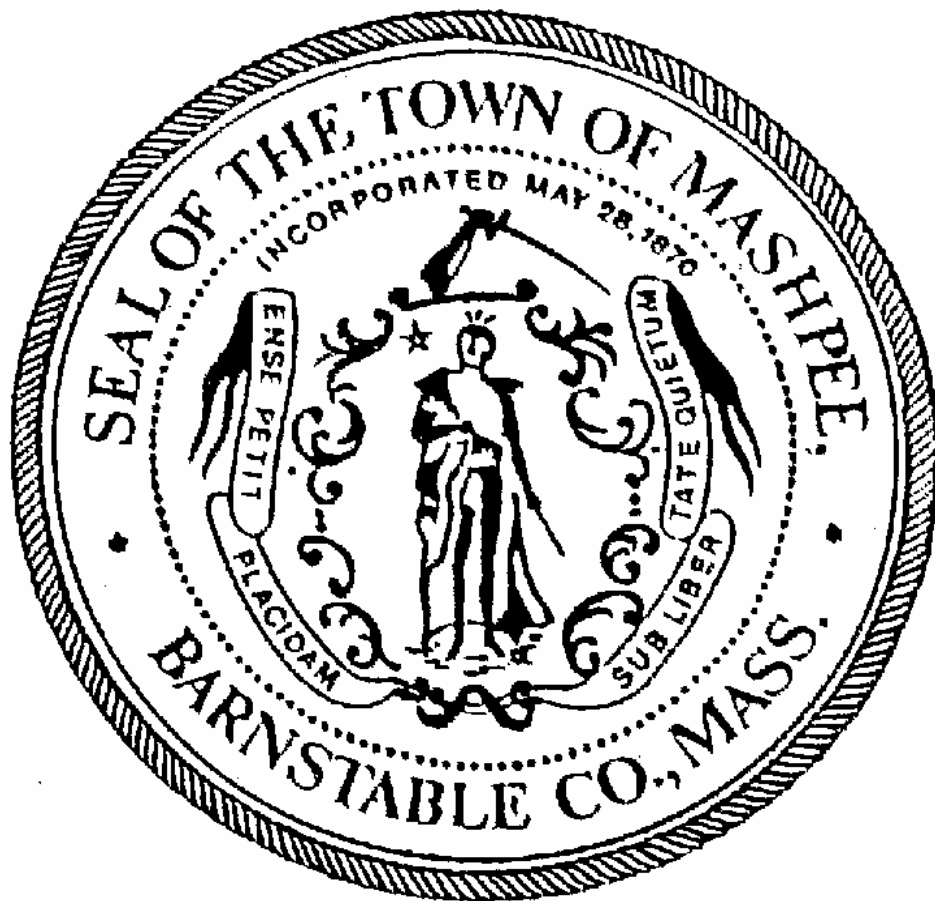


# GENERAL BYLAWS

## TOWN OF MASHPEE

2015



Updated as of October 19, 2015



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## **PART I**

# **ADMINISTRATIVE LEGISLATION**

## **CHAPTER 1 – GENERAL PROVISIONS**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

### **ARTICLE I – Adoption of Code**

**History: Adopted 11-13-1989 STM, Article 28, approved by Attorney General 2-16-1990.**

#### **§1-1 Adoption of Code:**

The town shall accept the renumbering of the various bylaws of the town from their original numbering to the numbering or codification, arrangement, sequence and captions as set forth in the Code of the Town of Mashpee, dated 2005, on file at the office of the Town Clerk, to be effective March 17, 2006, said codification having been done under the direction of the Board of Selectmen, Town Counsel and Town Clerk, and said Code being a compilation of the present bylaws of the Town and having no substantive changes or deletions in the text thereof, and the town shall renumber any additions to the bylaw prior to March 17, 2006.

### **ARTICLE II – Amendments to Bylaws**

**History: Adopted as Ch. 1, Art. 1.3, of the 1980 Code.**

#### **§1-2 General requirement:**

These bylaws may be amended at any Annual Town Meeting or Special Town Meeting, provided that an article or articles for that purpose be included in the Town Warrant.

### **ARTICLE III – General Penalties**

**History: Adopted 5-2-1983 ATM, Article 48, approved by Attorney General 10-12-1983.**

#### **§1-3 Noncriminal disposition:**

The provisions of MGL C. 40, §21D, providing for the noncriminal disposition of bylaw violation, shall be applicable to all violations of town bylaws wherein a specific penalty is provided for said violation.

#### **§1-4 Violations and penalties:**

Whoever violates any of the provisions of this Code, unless otherwise provided for therein, shall be punished by a fine of not less than twenty dollars (\$20) nor more than fifty dollars (\$50). Each day a violation occurs shall be considered a separate offense

### **ARTICLE IV – Gender**

**History: Adopted by the Town of Mashpee: Art. I, as Ch. 1, Art. 1.3, the 1980 Code;**

**History: Art. II, 5-2-1983 ATM, Article 48, approved by Attorney General 10-12-1983**

**History: Art. III 11-13-1989 STM, Article 28, approved by Attorney General 2-16-1990;**

**History: Art. IV, 5-4-1992 STM, Article 18, approved by Attorney General 8-26-1992.**

**Amendments noted where applicable.**

#### **§1-5 Use of gender:**

All references in the Code to gender shall be construed to include both male and female gender where the context and application so require.

## **ARTICLE V – Reorganization of Town Government**

**History: Added 10-20-2008 ATM, Article 13, approved by Attorney General 2-11-2009.**

### **§1-6 Reorganization of Town Government:**

Pursuant to the provisions of the Mashpee Home Rule Charter, Article V, Section 5-1(b), the Town Manager has adopted a Reorganization Plan for the orderly, efficient and convenient conduct of the business of the Town, dated September 8, 2008, a copy of which is appended to the Administrative Code section of these bylaws, which document is incorporated herein by reference. Said Reorganization Plan codifies the reorganization of the responsibilities and structure of the Department of Public Works in compliance with the provisions of Section 5-8 of the Charter, expands the duties and responsibilities of the Personnel Department into a Human Resources Department, reassigns the reporting relationship of the Harbormaster's Office and the Office of the Shellfish Warden to the Police Department, reassigns the Global Information Technology function to fall under the jurisdiction of the Information Technology Department, reassigns the Zoning Board of Appeals Administrative Assistant to the Department of Inspectional Services, and creates the position of Assistant Town Manager. Said Administrative Code I shall remain in full force and effect until amended, supplemented or repealed in accordance with the provisions of the Charter, Section 5-1.

## **CHAPTER 2 – TOWN MEETINGS**

**History: Adopted by the Town of Mashpee: Art. I, as Ch. 1, Art. 1.1, of the 1980 Code**

**History: Art. II, as Ch. 1, Art. 1.2, of the 1980 Code;**

**History: Art. III, as Ch. 2, Art. 2.13, Sec. 2.13.1, of the 1980 Code. .**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

**Amendments noted where applicable**

## **ARTICLE I – Miscellaneous Provisions**

**History: Adopted as Ch. 1, Article 1.1 of the 1980 Code.**

### **§2-1 Annual Town Meeting and Election:**

**History: Amended 11-13-1989 STM, Article 30, approved by Attorney General 2-16-1990.**

- A. The Town will hold two (2) regularly scheduled Annual Town Meetings. The Spring Annual Town Meeting will be held the first Monday in May and will address the Annual Town operating budget. The Fall Annual Town Meeting will be held the third Monday in October and will address any and all other business to come before the Town Meeting.  
**History: Amended 10-7-2002 ATM, Article 9, approved by Attorney General 11-27-2002.**  
**History: Amended 12-9-2002 STM, Article 9, approved by Attorney General 2-19-2003.**
- B. The Board of Selectmen shall receive all petitions addressed to it which request the submission of particular subject matter to the Town Meeting and which conform to the requirements of MGL C. 39, §10. All requests for the inclusion of subject matter shall be in writing, but shall not otherwise be required to conform to any particular style or form, except that each request for a particular subject shall be submitted as a separate petition.  
**History: See Mashpee Home Rule Charter (hereafter, the Charter), Section 2-7(a).**  
**History: Amended October 17, 2005 STM Article 1, approved by Attorney General 3-13-2006.**
- C. Articles for the Spring Annual Town Meeting must be submitted by the second (2<sup>nd</sup>) Monday in February each year. Articles for the Fall Town Meeting must be submitted by the second (2<sup>nd</sup>) Monday in July each year.  
**History: Amended 10-7-1996 ATM, Article 33, approved by Attorney General 12-9-1996.**
- D. The Selectmen may insert in said warrant, any article or articles received by them as of said Monday in February and said Monday in July. All articles will include a brief statement explaining the proposal prepared by the party submitting the article. Forthwith



following the filing of a proposed Warrant article and in no event later than the publication of the Warrant for the Town Meeting including such Warrant articles, or such other deadline as may be established by the Board of Selectmen, the proponents shall file with the Board of Selectmen all available plans, specifications, cost estimates and other supporting data necessary for fair consideration of the proposal by the Town Meeting. Forthwith following receipt of any proposed Warrant article the Board of Selectmen shall cause a copy of the proposal to be mailed to the residence of the Chairperson of the Finance Committee, a copy to be posted on the Town bulletin board and shall cause such other distribution to be made of each such proposal as may be required by law or by bylaw.

**History: See Charter, Section 2-7(a) & (b).**

**History: Amended 10-7-1996 ATM, Article 33, approved by Attorney General 12-9-1996.**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

- E. All articles submitted for inclusion in the warrant of any Town Meeting shall be printed or typewritten, in duplicate, and shall bear the same name of the sponsors.
- F. The regular annual Town Election of Town Officers will be held on the first (1<sup>st</sup>) Saturday in May immediately following the May Annual Town Meeting, except when that Saturday immediately precedes Mother's Day, and then the election will be held on the following Saturday at such place as determined by the Selectmen.

**History: Amended 10-17-2011 ATM, Article 25, approved by Attorney General 1-27-2012**

## **§2-2 Special Town Meetings:**

Special Town Meetings may be held at the call of the Board of Selectmen at such times as they deem necessary, or desirable, in order to transact the legislative business of the Town in an orderly manner. Special Town Meetings may also be held on the petition of two hundred (200) or more voters, in the manner provided by General Law. Before calling a Special Town Meeting, the Selectmen will insert in a local newspaper a notice specifying the last day upon which articles to be inserted in the warrant for such meeting will be presented to the Selectmen or the Town Clerk.

**History: See Mashpee Charter, Section 2-5.**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

## **§2-3 Quorum:**

One hundred (100) registered voters shall constitute a quorum of a Special Town Meeting. Quorum for an Annual Meeting shall be zero (0).

**History: Amended 8-25-1986, STM, Article 24, approved by Attorney General 10-17-1986.**

## **§2-4 Majority Voting Requirement:**

No article within any Annual or Special Town Meeting Warrant shall be moved for consideration after 10:00 p.m. without a two-thirds (2/3rds) vote of the Town Meeting.

**History: Amended 5-4-1987 ATM, Article 70, approved by Attorney General 9-21-1987.**

## **§2-5 Warrant:**

Every Annual and Special Town Meeting and every Annual and Special Election shall be called in pursuance to a Warrant. The Warrant shall be directed to the Constable or to some other person designated by the Board of Selectmen, who shall forthwith give notice at least thirty (30) days before such meeting or election by posting a copy of said Warrant, one (1) at Town Hall and one (1) at each of the Town bulletin boards, and by causing to be published in a newspaper of general circulation with the Town of Mashpee a copy of said Warrant.

**History: Amended 5-7-1984 ATM, approved by Attorney General 9-17-1984.**

**History: Amended 5-1-1989 STM, Article 58, approved by Attorney General 7-5-1989.**

**History: Amended 10-2-1995 ATM, Article 22, approved by Attorney General 12-1-1995.**

**History: Amended 10-7-1996 ATM, Article 55, approved by Attorney General 12-9-1996.**

**History: Amended 5-5-1998, ATM, Article 36, approved by Attorney General 8-12-1998.**

## §2-6

### Report to Voters:

- A. There shall be published for every Town Meeting a copy of the Warrant and a report to the voters which shall contain the explanation and relevant data submitted in accordance with §2-7, together with the articles; provided, however, that, in the alternative and at the discretion of the Finance Committee and (with respect to zoning articles) the Planning Board, voluminous supporting material necessary for consideration of the particular articles in lieu of inclusion in the report to the voters, may be made reasonably available for inspection at the public locations prior to Town Meeting.

**History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

- B. In addition to the written report of the Planning Board setting out its findings and recommendations as to all zoning articles, the Finance Committee shall prepare a written report, setting out its findings, conclusions and recommendations, including the reasons therefore, regarding all of the articles in the Warrant. The report of the Finance Committee shall not be limited to the fiscal impact on Town taxpayers of articles contained in the Warrant, but shall extend to all articles in the Warrant of whatever nature. The report for the spring session of the Annual Town Meeting shall also include, as an appendix, the annual report of the Capital Outlay and Planning Committee, setting forth a five (5)-year capital outlay program for the information and guidance of Town Meeting. In addition, the Board of Selectmen shall have the opportunity to include in the report its conclusions and recommendations, including the reasons therefore, regarding articles in the Warrant that relate to its general superintendence over the administration of Town affairs.

**History: See Mashpee Charter, Section 2-11.**

**History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

- C. The Finance Committee, in accordance with the requirement to make recommendations to the Town (Chapter 5, Article III, Section 5-9) shall publish and distribute to every voter registered to vote in Mashpee as of thirty (30) days prior to such meeting a copy of said warrant containing a report and recommendations with respect to the articles in said warrant by the third Monday of the month preceding the Town Meeting, provided that any two (2) or more registered voters who reside in the same household shall be entitled to only one (1) copy of such warrant. The Finance Committee, shall in addition to the foregoing, publish and deliver to the Clerk five hundred (500) copies of said warrant for distribution to the public at large on a first-come, first-serve basis.

## §2-7

### Warrant Articles:

- A. The articles shall be considered in the order in which they appear in the Warrant.

**History: Amended 2-1-1988 STM, Article 15, approved by Attorney General 3-16-1988.**

1. **Consent Calendar:** The Board of Selectmen, at its discretion, may designate certain Warrant articles that it believes to be non-controversial, to be part of a Consent Calendar. Early in a Town Meeting in which a Consent calendar has been designated, the Moderator shall advise the meeting that he is about to call that calendar. Before calling the calendar, however, the Moderator shall give the Board of Selectmen an opportunity to offer a single motion to amend, as to dollar amount only, any or all of the designated articles. That motion shall not be debatable. The Moderator shall then call the calendar. If a voter objects to any particular Article being included in the Consent Calendar, they should say the word "HOLD" in a loud voice when the number is called. If two (2) or more voters object to inclusion of an article in the calendar, the article shall then be removed from the Consent Calendar and restored to its original place in the Warrant to be thereafter moved, debated and voted upon in the normal order. After the completion of the call of

the calendar, all remaining articles on the calendar shall be moved and voted as a group, without debate.

**History: Added 10-4-1999 ATM, Article 15, approved by Attorney General 1-11-2000.**

- B. Limitations of articles appropriations are prohibited at Special Town Meetings except as follows:

**History: Amended 8-25-1986 STM, Article 2, approved by Attorney General 10-17-1986.**

1. Any article determined by the Board of Selectmen to be extraordinary and inserted on the Warrant by the Board of Selectmen on a majority roll call vote of the Board at a regular meeting.
2. Any article to permit Town Meeting approval of a collective-bargaining agreement in accordance with MGL C. 150E of the Massachusetts General Laws.
3. Any article to appropriate or transfer money into the Stabilization Fund, Conservation Fund or Pension Reserve Fund.
4. Any article that would permit money to be transferred to reduce the property tax rate.
5. Any article otherwise required by law.

- C. Any article, which requests a sum of money, shall state in the article the amount being requested. Articles for transfer to Stabilization Account or for offsetting fiscal year taxes may omit an amount, but must include an estimate of the amount in an explanation printed in the warrant.

**History: Amended 10-7-1996 ATM, Article 34, approved by Attorney General 12-9-1996.**

**§2-8 Reservation of Seating:**

The main body of the house shall be reserved for registered voters; all others are to be seated in another section.

**§2-9 Hand Votes:**

If any voter rises in his/her place and questions any oral “yea” or “nay” vote, without further discussion a hand vote shall be taken.

**§2-10 Moderator’s Declaration:**

When a two-thirds (2/3rds) vote is required by statute, the moderator may simply declare that the vote passed by the necessary two-thirds (2/3rds) majority in accordance with MGL C. 39, §15. Seven (7) voters can question the moderator’s declaration of the vote.

**History: Amended 5-5-2003 ATM, Article 15, approved by Attorney General 8-27-2003.**

**§2-11 Motion in Writing; Zoning Motions:**

The Moderator may require lengthy or involved motions to be presented in writing. All motions affecting the Zoning Bylaw must be presented in writing and must be accompanied by a survey plan if zoned area is to be created or altered.

**§2-12 Reconsideration of Votes:**

No vote shall be reconsidered at the same meeting at which it is acted upon unless public notice of the intention to move such reconsideration is given within thirty (30) minutes of the

declaration of the vote by the Moderator, and no notice of intent to move reconsideration on any vote shall be received by the Moderator more than two (2) times at the same meeting. The Town Clerk shall note, in writing, the action taken and time of such vote and also the time when the notice of reconsideration is given.

**History: Amended 8-25-1986 STM, Article 3, approved by Attorney General 10-17-1986.**

**§2-13 Simultaneous Meetings:**

Elected or appointed Town boards or committees may meet during Town Meetings at the place where the Town Meeting is held, for the sole purpose of making recommendations and advising Town Meeting participants on any matter included in the Warrant for that Town Meeting.

**History: Amended May 6, 1996 ATM, Article 30, approved by Attorney General 9-26-1996.**

**§2-14 Governing of Meetings:**

All Town Meetings will be governed by Town Meeting Time.

**ARTICLE II – Annual Town Report**

**History: Adopted as Ch. 1, Art. 1.2, of the 1980 Code.**

**§2-15 Date of Submission:**

All Town reports from each department and elected or appointed officials shall be printed or typewritten and submitted to the Selectmen or Town Clerk on or before the second (2<sup>nd</sup>) Monday of February in each year.

**§2-16 Content:**

The Annual Town Report shall contain:

- A. The reports of all Town boards, officers and committees having the control of expenditure of the Town's money, including a list of all indebtedness against each department, which does not appear in its financial statement.
- B. A report of all Town Meetings held during the year, including the articles of the Warrant and the action of the meeting thereon.
- C. Reports, or abstracts of reports, of all special committees presented at any meetings held during the year, together with any action taken at said meetings, including committee appointments and resolutions passed.
- D. All other reports as required by the Massachusetts General Laws as amended from time to time.

**ARTICLE III – Votes on Special Committees**

**History: Adopted as Ch. 2, Art. 2.13.1, of the 1980 Code.**

**§2-17 Required Voters:**

At any Town Meeting, when special committees are appointed or elected, a vote shall be passed naming the compensation of the committee and also a sum of money for the expenses of such committee; otherwise, the Selectmen shall not draw orders on the Treasurer for either services or expenses.

## **CHAPTER 3 – APPOINTED BOARDS AND COMMISSIONS**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

### **ARTICLE I – Miscellaneous Provisions**

**History: Adopted as Ch. 2, Article 2.13, Sec 2.13.4 of the 1980 Code.**

#### **§3-1 Residency Qualification:**

All appointees to multi-member boards, commissions, or committees of the Town must be Mashpee residents as of the date of their appointment and throughout their terms of office; provided, however, that Town officers or employees designated to serve “ex officio” by virtue of their office on any such board, commission or committee or architects and similar licensed professionals designated for membership on the Design Review Committee and Historic District Commission, shall be exempt from this requirement, and provided, further, that non-resident appointees to multi-member boards, commissions, or committees holding Town office or employment positions as of the effective date of this amended Bylaw shall be exempt from this requirement for the remainder of their terms of office or employment. The office of any appointee to which this residency qualification applies shall be deemed to have been vacated upon removal of the appointee from the Town.

**History: Added 5-5-2014 ATM, Article 16, approved by Attorney General 6-11-2014**

#### **§3-2 Term of Appointment:**

All appointments made by the Selectmen shall be for one-year (1) terms expiring on June 30 in each year, unless otherwise specified in this Chapter, in the Mashpee Home Rule Charter (hereafter, the “Charter”) or in the General Laws of the Commonwealth. Any person appointed by the Board of Selectmen to any position shall be sworn to the faithful performance of their position by the Town Clerk prior to assuming the position. Once a person is so sworn it shall not be necessary in any subsequent year where the same person is reappointed to the same position to again be sworn.

**History: Added 10-5-1992 ATM, Article 21, approved by Attorney General 1-11-1993.**

#### **§3-3 Removal from Office:**

The removal of any appointed Town officer, member of a multiple member body or employee of the Town, not subject to the provisions of the state civil service law, or covered by the terms of a collective bargaining agreement which provides a different method of suspension or removal, may be suspended or removed from office without compensation in accordance with the provisions of the Charter, §7-9, as may be amended from time to time.

**History: Added 5-2-1983 ATM, Article 47, approved by Attorney General 10-12-1983.**

**History: See Mashpee Charter, Section 7-9.**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

### **ARTICLE II – Board of Health**

**History: Adopted as Ch. 2, Article 2.5 of the 1980 Code.**

#### **§3-3 Membership; Terms:**

The Board of Selectmen shall appoint three (3) members to constitute a Board of Health, each member to serve a term of three (3) years. Members serving elected terms of office as of the effective date of the Charter shall complete their respective elected terms, whereupon a successor to each such member shall be appointed in accordance with the Charter.

**History: See Mashpee Charter, sections 3-1(a) & 3-2(d).**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

**§3-4 Election of Chairman:**

The Board of Health shall annually, in May, elect one (1) of its members as Chairman of the Board.

**§3-5 Appointment of Clerk or Secretary:**

The Board shall appoint one (1) of its members as Clerk or Secretary of the Board, who shall keep an accurate record of the meetings, votes, orders and doings of the Board.

**§3-6 Accommodations:**

The Selectmen shall provide a suitable space for the Board of Health in the Town Office Building, and all books, records and documents pertaining to the doings of the Board, properly indexed, shall be kept on file in said space for convenient inspection by the Town officials and the Board's successors in office.

**§3-7 Term of Appointment:**

The Board of Health shall appoint a Board of Health Agent.

**ARTICLE III – Finance Committee**

History: Adopted as Ch. 2, Article 2.6 of the 1980 Code.

**§3-8 Membership; Terms:**

The Town Moderator shall appoint a Finance Committee, consisting of seven (7) voters of the Town, none of whom shall hold any other elective or appointed Town office except as otherwise authorized in this Code. The term of service of the members of the Committee shall be three (3) years.

History: Amended 5-3-1982 ATM, Article 18, approved by Attorney General 9-7-1982.

History: See Mashpee Charter, Section 3-6(b).

History: Amended 10/17/2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§3-9 Organization; Duties:**

The Finance Committee shall choose one (1) of its number as Chairman and likewise choose a Clerk. Said Committee may consider such questions with reference to the conduct of the Town affairs as it may deem advisable and may consult with any and all officers, boards and committees of the Town with reference to matters under its supervision; it shall review all articles, of whatever nature, in the Warrant for any Annual or Special Meeting called during its tenure of office and shall prepare a written report, setting out its findings, conclusions, and recommendations, including reasons therefore, regarding said Warrant articles. The report of the Finance Committee for the spring session of the Annual Town Meeting shall include, as an appendix, the annual report of the Capital Outlay and Planning Committee, setting forth a five (5)-year capital outlay program for the information and guidance of the Town Meeting. The Finance Committee shall conduct such public hearings and provide such reports and recommendations with respect to the proposed annual operating budget of the Town as may be required by the Charter or this Code. The Finance Committee shall furthermore annually provide for an outside audit of the books and accounts of the Town to be made by a certified public accountant, or a firm of certified public accountants, who have no personal interest, direct or indirect, in the fiscal affairs of the Town or any of its officers.

History: See Mashpee Charter, Sections 2-11, 6-6 & 6-91.

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§3-10 Hearings; Expenditures:**

The Finance Committee may hold hearings if, in its judgment, it is expedient but shall expend no money unless authorized by the vote of the Town.

**§3-11 Authority to Inspect Records:**

The Finance Committee shall have authority at any time to examine and investigate the books, accounts and management of any department of the Town and of all officers thereof, and all official or departmental records shall be open to the inspection of the Committee or of any person authorized in writing to act for the Committee.

**§3-12 Reimbursement:**

The members of the Finance Committee shall serve without pay for their services, but they may be reimbursed for actual expenses incurred in the discharge of their duties hereunder, with the approval of the Board of Selectmen.

**§3-13 Vacancies:**

Vacancies occurring in the Finance Committee shall be filled by the appointing authority pursuant to the Charter.

History: See Charter, Section 3-6(b).

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General on 3-13-2006.

**ARTICLE IV – Council on Aging**

History: Adopted as Ch. 2, Article 2.7 of the 1980 Code.

**§3-14 Appointment; Purpose:**

The Board of Selectmen shall appoint a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in cooperation with programs of the Department of Elder Affairs established under MGL C. 19A.

**§3-15 Membership; Terms:**

Reappointment; Compensation: The Board of Selectmen shall appoint the Council on Aging, consisting of nine (9) members whose terms shall be arranged so that, as nearly as possible, an equal number of terms expire each year. Except in the case of initial appointments, members shall be appointed for terms of three (3) years and to authorize the initial appointment of two (2) additional members as follows: one (1) for a three year (3) term expiring on June 30, 2004 and one (1) for a one year (1) term expiring on June 30, 2002.

History: Amended 5-7-2001 ATM, Article 22, approved by Attorney General 8-17-2001.

**§3-16 Vacancies:**

Whenever a vacancy shall occur in the membership of the Council, be reason of death, resignation, inability to act or for any other reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.

**§3-17 Organization:**

The Council on Aging, at its first (1<sup>st</sup>) annual meeting and thereafter annually in July of each year, shall elect from its membership a Chairman, Vice Chairman, Secretary and Treasurer. Each officer shall hold office until the next annual election. In the event a vacancy occurs in

any of the offices above, the Council shall hold a special meeting for the purpose of electing one (1) of its members to fill such vacancy.

**History: Amended 10-1-1990 ATM, Article 12, approved by Attorney General 12-18-1990.**

**§3-18 Annual Report:**

The Council shall prepare and submit an annual report of its activities to the Town and shall send a copy thereof to the Department of Elder Affairs.

**§3-19 Appointments:**

The Council may appoint such clerks and other employees as it may require without compensation.

**ARTICLE V – Conservation Commission**

**History: Adopted as Ch. 2, Article 2.8 of the 1980 Code.**

**§3-20 Membership - Terms:**

A Conservation Commission shall be appointed by the Selectmen under the provisions of MGL C. 40, §8C, and all amendments thereof, and shall consist of not fewer than seven (7) members to serve for terms of three (3) years.

**§3-21 Land Acquired by Town:**

No land acquired by the Town through tax title proceedings shall be sold or otherwise disposed of until it shall have first been determined by a vote at a Town meeting whether or not said land shall be held by the Town as conservation land for all purposes included in MGL C. 40, §8C, as it now reads or may hereafter be amended, or shall be held by the Town for some other municipal purpose.

**§3-22 Posting of Bond:**

The Conservation Commission may require the posting of a bond, with surety, running to the municipality and sufficient as to form and surety in the opinion of the Commission's council to secure faithful and satisfactory performance of work required by any final order of conditions, in such sum and upon such conditions as the Commission may require. Other evidence of financial responsibility which is satisfactory to the Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond shall not exceed the estimated cost of the work required of the restoration of affected lands and property if the work is not performed as required, whichever is the greater. Forfeiture of any such bond shall be recoverable at the suit of the municipality in the Superior Court.

**ARTICLE VI – Historical Commission**

**History: Adopted as Ch. 2, Article 2.10 of the 1980 Code.**

**§3-23 Appointment; Membership Terms:**

The Selectmen shall appoint a Historical Commission under MGL C. 40, §8D, to consist of not fewer than five (5) members. They shall serve for three-year (3) terms. New members shall be appointed each year by the Selectmen to replace those members whose terms have expired.



**§3-24 Duties:**

The function of the Commission is to preserve, restore and maintain the historic features of the Town of Mashpee and to perform any other functions provided by law by such bodies.

**ARTICLE VII – Board of Sewer Commissioners**

History: Adopted as Ch. 2, Article 2.15 of the 1980 Code.

**§3-25 Membership; Terms:**

The Board of Sewer Commissioners shall consist of seven (7) voters of the Town appointed by the Selectmen, one (1) from each of the five (5) precincts and two (2) appointed at large. Should no suitable candidate apply for any vacant position intended to represent a precinct after thirty (30) days of advertisement of the vacancy by the Selectmen, the Board of Selectmen may re-advertise the vacancy and appoint any qualified applicant who is a voter of the Town.

History: See Charter, Section 3-2(d).

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

History: Amended 10-19-2009 STM Article 9, approved by Attorney General 1-26-2010

History: Amended 10-17-2011 ATM, Article 13, approved by Attorney General, 2-21-2012.

**§3-26 Chairman:**

The Board of Sewer Commissioners shall annually, in May, elect one (1) of its members as Chairman of the Board.

**§3-27 Clerk/Secretary:**

The Board shall appoint one (1) of its members as Clerk/Secretary of the Board, who shall keep an accurate record of the meetings, votes, orders and doings of the Board.

**§3-28 Powers and Duties:**

The Board of Sewer Commissioners shall have the duties and powers granted to it by the Massachusetts General Laws and those voted by Town Meeting.

**ARTICLE VIII – Shellfish Commission**

History: Adopted 8-25-1986 STM, Article 7, approved by Attorney General 10-17-1986.

**§3-29 Membership - Terms:**

The Selectmen shall appoint a Shellfish Commission to consist of five (5) members, one (1) member to be the Shellfish Constable, two (2) members to represent recreational interests, and two (2) members to represent commercial interests. The initial terms of office shall be one (1) for one (1) year, two (2) for two (2) years and two (2) for three (3) years. Thereafter members shall be appointed annually to replace those members whose terms have expired.

**§3-30 Organization:**

The Shellfish Commission shall annually organize at its first meeting of each fiscal year by the selection of a Chairman, Vice Chairman and Secretary, who shall serve for one (1) year.

**§3-31 Powers and Duties:**

The Shellfish Commission shall advise and assist the Shellfish Constable and the Board of Selectmen. It shall make recommendations relating to shellfishing in the Town and shall act in an advisory capacity to all Town boards, committees or officials seeking assistance from the Commission. The Board of Selectmen shall designate, as applicable, members of the Shellfish Commission, upon their request, as Deputy Shellfish Constables to serve without compensation.

**§3-32 Associate Members:**

The Selectmen shall annually appoint three (3) or more associate members to the Shellfish Commission for one-year (1) terms. They shall have voting power upon designation by the Commission Chairman in the absence of any regular Commission member at any meeting of the Commission.

**ARTICLE IX – Mashpee Cable and Advanced Technology Advisory Board**

History: Adopted 5-4-1987 ATM, Article 61, approved by Attorney General 9-21-1987.

**§3-33 Appointment; Membership; Terms:**

The Selectmen shall appoint a Mashpee Cable and Advanced Technology Advisory Board consisting of not more than seven (7) members. Initially, the appointment shall consist of two (2) members for one (1) year, two (2) members for two (2) years and three (3) members for three years, so as to provide for staggered terms of office.

History: Amended 10-1-2001, ATM, Article 17, approved by Attorney General 12-6-2001.

**§3-34 Organization:**

The Committee shall reorganize annually at its first meeting following the final day of June by election of a Chairman, Vice Chairman and Secretary.

**§3-35 Duties:**

The Committee shall conduct a public hearing on any application request for a cablevision system in any future or proposed development by any individual or corporation and shall make recommendations to the Board of Selectmen.

**§3-36 Appointment of Advisor:**

The Board of Selectmen may appoint a nonvoting advisor who has expertise in the field of telecommunications to assist the Committee. The Board of Selectmen shall give preferences to registered voters of the Town of Mashpee but may appoint a nonresident to said position.

**ARTICLE X – Waterways Commission**

History: Adopted 10-1-1990 ATM, Article 16, approved by Attorney General 12-18-1990.

**§3-37 Appointment; Membership; Terms:**

The Board of Selectmen shall appoint a Waterways Commission to consist of seven (7) members, two (2) members representing freshwater interests, two (2) members representing saltwater interests, one (1) member representing recreational interests, one (1) member representing commercial interests and one (1) member from the community at large. The initial terms of office shall be three (3) years. Thereafter members shall be appointed annually to replace those members whose terms have expired.

**§3-38 Organization:**

The Waterways Commission shall annually organize at its first meeting of each fiscal year by the selection of a Chairman, Vice Chairman and Secretary, who shall serve one (1) year.

**§3-39 Powers and Duties:**

The Waterways Commission shall advise and assist the Board of Selectmen. The Board of Selectmen will take into consideration the advice and views of the Waterways Commission, pursuant to these bylaws, prior to the formulation of policy and budget recommendation.

**ARTICLE XI – Affordable Housing Committee**

**History: Adopted 5-1-2000 ATM, Article 33, approved by Attorney General 8-7-2000.**

**History: Amended 5-5-2003-ATM, Article 16, approved by Attorney General 8-27-2003.**

**§3-40 Appointment; Purpose:**

The Board of Selectmen shall appoint an Affordable Housing Committee for the purpose of assisting in any future updates to the Affordable Housing element of the Comprehensive Plan, reviewing and submitting comments on any proposals for affordable housing projects submitted for approval to the Board of Selectmen under the Local Initiative Program or the Zoning Board of Appeals under MGL C. 40B, identifying and facilitating opportunities for increased housing affordability in Mashpee on an ongoing basis, working with the Planning Department and other agencies to develop a Housing & Community Development and maintaining communications with similar groups in housing organizations. The activities and recommendations of the Committee shall be consistent with the goals, objectives, policies and action plan of the Town's adopted Comprehensive Plan.

**§3-41 Membership; Terms:**

The Board of Selectmen shall appoint the Affordable Housing Committee consisting of five (5) members. Members shall be reappointed annually. The members of the Affordable Housing Committee shall serve without pay.

**History: Amended 5-3-2010 ATM, Article 9, approved by Attorney General 6-3-2010**

**§3-42 Organization; Meetings:**

The Committee shall elect annually a Chairman, Vice Chairman and Clerk. Said election shall take place at its first meeting after July 1 of each year.

**§3-43 Powers and Duties:**

Said Committee shall be responsible for:

- A. Assisting in any future updates to the Affordable Housing element of the Comprehensive Plan,
- B. Reviewing and submitting comments on any proposals for affordable housing projects submitted for approval to the Board of Selectmen under the Local Initiative Program or to the Zoning Board of Appeals under M.G.L. C. 40B,
- C. Identifying and facilitating opportunities for increased housing affordability in Mashpee on an ongoing basis,

- D. Working with the Planning Department and other agencies to develop a Housing Development Action Plan under the provisions of 760 CMR 46.00 and seeking its approval by the Board of Selectmen and the Secretary of Massachusetts Department of Housing & Community Development and
- E. Maintaining communications with similar groups in housing organizations. The activities and recommendations of the Committee shall be consistent with the goals, objectives, policies and action plan of the Town's adopted Comprehensive Plan. Said Committee may also serve as, and may perform the functions and duties of, the Town's "Local Housing Partnership", provided that all of the legal and regulatory requirements for creation of such a "Partnership" are met.

## **ARTICLE XII – Subdivision Board of Appeals**

**History: Adopted 5-4-1992 ATM, Article 8, approved by Attorney General 7-15-1992.**  
**History: Amended 10-1-2001, ATM, Article 18, approved by Attorney General 12-6-2001.**

### **§3-44 Appointment; Membership; Associate Members:**

The Board of Selectmen shall appoint three (3) members of the Subdivision Board of Appeals. One (1) shall be a member of the Planning Board, one (1) shall be a member of the Zoning Board of Appeals, and the third shall be the Director of Public Works. The Board of Selectmen shall also appoint three (3) or more associate members to sit on the Board in case of the absence, inability to act or interest on the part of a member thereof or in the event of a vacancy on said Board until said vacancy is filled.

### **§3-45 Term; Removal from Office; Vacancies:**

The initial appointment by the Board of Selectmen for regular and associate members shall provide for one (1) member to serve for one (1) year, one (1) member to serve for two (2) years and one (1) member to serve for three (3) years. Thereafter, upon the expiration of the term, each member shall be appointed for a three-year (3) term. Any member or associate member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing. Vacancies, as they occur, shall be filled for the unexpired term in the same manner as in the case of original appointments.

### **§3-46 Organization; Officers:**

The Subdivision Board of Appeals shall elect annually a Chairman and Clerk from its own members. The election shall take place at the first meeting of the Board after July 1 of each year. The Chairman shall have the power to designate associate members to sit on the Board as needed.

### **§3-47 Powers; Meetings:**

The Subdivision Board of Appeals shall adopt rules and conduct its business in accordance with the provisions of MGL C.41, §81Z and §81AA. The Chairman shall preside. In the absence of a Chairman, an Acting Chairman shall be designated to preside. Meetings shall be held at the call of the Chairman. The Board shall have the power to issue a permit for the erection of a building under MGL C. 41, §81Y, upon majority vote and finding of fact as set forth in Section 81Y.

## **ARTICLE XIII – Town of Mashpee Affordable Housing Trust Fund**

**History: Amended 5-1-2006 ATM, Article 19, approved by Attorney General on 10-26-2006**

### **§3-48 Membership:**

There shall be a board of trustees of the Town of Mashpee Affordable Housing Trust Fund established by the vote under Article 19 of the Warrant for the May 1, 2006 Annual Town Meeting, in this section called the board, which shall include 9 (nine) trustees, including all of the members of the Board of Selectmen, with the remaining members to be appointed by the Board of Selectmen. Trustees shall serve for a term not to exceed two (2) years. A quorum of the board of trustees shall be (5) five.

### **§3-49 Powers and Duties:**

The powers of the board, all of which shall be carried out in furtherance of the purposes set forth in MGL C. 44, §55C, shall include the following:

- A. To accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation or other public or other public or private entity, including without limitation grants of funds or other property tendered to the trust in connection with provisions of the city or town zoning code or any other town bylaw;
- B. To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- C. To sell, lease, exchange, transfer or convey any personal, mixed or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;
- D. To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment for the purposes of the trust;
- E. To employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;
- F. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
- G. To apportion receipts and charges between income and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- H. To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or power of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- I. To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem

proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

- J. To carry property for accounting purposes other than acquisition date values;
- K. To borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
- L. To make distributions or divisions of principal in kind;
- M. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
- N. To manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
- O. To hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
- P. To extend the time for payment of any obligation to the trust.

## **ARTICLE XIV – Community Preservation Committee**

**History: Added 5-2-2005 ATM, Article 22, approved by Attorney General 9-6-2005.**

### **§3-50 Establishment; Membership; Terms:**

There is hereby established a Community Preservation Committee, pursuant to the provisions of MGL C. 44B and Section 298 of Chapter 149 of the Acts of 2004. The Committee shall consist of nine (9) voting members as follows: one (1) member of the Conservation Commission as designated by said Commission, one (1) member of the Historical Commission as designated by said Commission, one (1) member of the Planning Board as designated by said Board, one (1) member of the Board of Selectmen acting as Park Commissioners under §4-6, as designated by said Board, one (1) member of the Mashpee Housing Authority as designated by said Authority, and four (4) at-large members appointed by the Board of Selectmen. Members of the Committee shall serve for a term of one (1) year, with initial terms beginning July 1, 2005, or until the person no longer serves on the Board or Committee as set forth above, whichever is earlier, and shall be subject to designation or appointment on an annual basis thereafter. Should any of the commissions, boards, or authorities listed above be no longer in existence for whatever reason, the Board of Selectmen shall appointment a suitable person to serve in their place. Vacancies occurring in the Committee shall be filled in the manner of the original designation or appointment.

### **§3-51 Organization:**

The Committee shall, annually in July of each year, elect a Chairman, Vice Chairman and Clerk. Each such officer shall hold office until the next such election. In the event a vacancy occurs in any of the offices above, the Committee shall elect a replacement at its next meeting, to serve the remainder of the annual term.

**§3-52 Powers and Duties:**

The Committee shall have the rights and powers, and shall be subject to the duties, obligations and restrictions, set forth MGL C. 44B and Section 298 of Chapter 149 of the Acts of 2004, as they may be occasionally amended, and any other powers and duties that may be specified in the General Laws of the Commonwealth or by Town Meeting.

**§3-53 Open Meeting Law; Quorum:**

The Committee shall comply with the provisions of the Open Meeting Law, M.G.L. C. 39, §23B. The Committee shall not meet or conduct business without the presence of a majority of the members of the Committee and shall approve its actions by majority vote of the members present

**ARTICLE XV-Historic District Commission**

**History: Added 10-15-2007 Article 21, approved by Attorney General 1-28-2008.**

**§3-54 Appointment; Membership; Alternate Members:**

- A. The Board of Selectmen shall appoint a Historic District Commission, consisting of seven (7) members, two (2) members initially to be appointed for one (1) year, two (2) for two(2) years, and three (3) for three (3) years, and each successive appointment to be made for three (3) years. The Commission shall include, if possible, at least one (1) member from two (2) nominees solicited from the Mashpee Historical Commission one (1) member from two (2) nominees solicited from the chapter of the American Institute of Architects covering Mashpee and at least one (1) property owner from within the District. In addition, in order to accurately reflect Mashpee's historical character and the composition of the town's heritage stewardship, the Commission shall include one (1) member from two (2) nominees from each of the Mashpee Wampanoag Indian Tribal Council and the Mashpee Planning Board. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the Board of Selectmen may proceed to make appointments as it desires. To the extent possible, members of the Commission should be knowledgeable and experienced in historic preservation.
- B. The Board of Selectmen may appoint up to three (3) alternate members to the Commission. Each alternate member shall have the right to act and vote in the place of one (1) regular member, upon designation by the Chairman of the Commission, or if the Chairman is unavailable, the Vice Chairman, should such regular member be absent from a meeting or be unwilling or unable to act or vote. Said alternate members shall initially be appointed for terms of two (2) or three (3) years, and for three-year (3) terms thereafter.
- C. Each member and alternate member shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed. Vacancies, as they occur, shall be filled for the unexpired term in the same manner as in the case of original appointments.

**§3-55 Organization; Officers:**

The Historic District Commission shall elect annually a Chairman, Vice Chairman and Secretary from its own members. The election shall take place at the first meeting of the Board after July 1 of each year.

**§3-56 Meetings:**

Meetings of the Commission shall be held at the call of the Chairman, at the request of two (2) members and in such other manner as the Commission shall determine in its Rules and Regulations. Four (4) members of the Commission, not including alternates, shall constitute a quorum.

**§3-57 Powers and Duties:**

- A. The Commission shall exercise its powers in administering and regulating the construction and alteration of any structures or buildings within any Local Historic District established within the Town of Mashpee as set forth under the procedures and criteria established in this Article. In exercising its powers and duties hereunder, the Commission shall pay due regard to the distinctive characteristics of each building, structure and District area. In addition, the Commission may exercise any other powers or duties designated by Town Meeting or by the General Laws.
- B. The Commission may adopt, and from time to time amend, reasonable rules, regulations and guidelines not inconsistent with the provisions of this Article or M.G.L. C. 40C, setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, fees, hearing procedures and other matters and design guidelines for construction and alterations within a District area. The Commission shall file a copy of any such rules, regulations and guidelines with the office of the Town Clerk.
- C. The Commission shall keep a permanent record of its resolutions, transactions, decisions and determinations and of the vote of each member participating therein.
- D. The Commission shall undertake educational efforts to explain to the public and property owners the merits and functions of a Historic District.

**CHAPTER 4 – ELECTED BOARDS AND COMMISSIONS**

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**ARTICLE I – MISCELLANEOUS PROVISIONS**

**§4-1 Residency Qualification:**

All members of elected Town boards, commissions, and committees must be Mashpee residents as of the date of their election and throughout their terms of office. The office of all elected officers of the Town shall be deemed to have been vacated upon removal of the elected officer from the Town.

**ARTICLE II – Board of Selectmen**

History: Adopted by the Town of Mashpee as Ch. 2, Article. 2.1, of the 1980 Code.  
Amendments noted where applicable.

**§4-2 Composition; Term of Office:**

There shall be a Board of Selectmen consisting of five (5) members elected for terms of three (3) years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year.

History: See Charter, Section 3-2(a).

History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.



**§4-3 Organization:**

The Board of Selectmen shall reorganize at their first regular or special meeting following each annual election by the selection of a Chairman, Vice Chairman and Clerk, and notice thereof shall forthwith be given to the Town Clerk.

History: Amended 8-25-1986 STM, approved by Attorney General 10-17-1986.

**§4-4 Powers and Duties:**

The executive powers of the Town shall be vested in the Board of Selectmen, which shall be deemed to be the chief executive office of the Town. The Board of Selectmen shall have all of the executive powers it is possible for a Board of Selectmen shall have and to exercise. The Board of Selectmen shall serve as the chief policy making agency of the Town. The Board of Selectmen shall be responsible for the formulation and promulgation of policy directives and guidelines to be followed by all Town agencies serving under it and, in conjunction with other elected Town officers and multiple member bodies to develop and promulgate policy guidelines designed to bring the operation of all Town agencies into harmony. Provided however, nothing in this section shall be construed to authorize any member of the Board of Selectmen, nor a majority of such members, to become involved in the day-to-day administration of any Town agency. It is the intention of this provision that the Board of Selectmen shall act only through the adoption of broad policy guidelines, which are to be implemented by officers and employees serving under it.

History: See Charter, Section 3-2(b).

History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§4-5 Legal Proceedings:**

The Selectmen shall have full authority as agent of the Town to employ counsel to institute and prosecute suits in the name of the Town, except suits on bonds, notes or other securities given to the Town Treasurer, and to appear and defend suits brought against it and to appear in proceedings before any tribunal, unless it is otherwise specially ordered by vote of the Town.

**§4-6 Park Commissioners:**

The Board of Selectmen shall act as Park Commissioners for the Town and shall have authority to promulgate rules and regulations for use of Town-owned parks, playgrounds, beaches, athletic facilities or any other recreational facilities. No rules and regulations adopted shall conflict with this Code. Any violation of rules and regulations shall be punished by a fine of twenty-five dollars (\$25) for the first offense, fifty dollars (\$50) for any second offense and one hundred dollars (\$100) for any third or subsequent offense. Each violation shall constitute a separate offense on each successive occurrence. The provisions of MGL C. 40, §21D, shall be applicable.

History: Amended 5-6-1985 ATM, Article 7.

**ARTICLE II – Planning Board**

History: Adopted as Ch 2, Article 2.7 of the 1980 Code.

**§4-7 Membership; Terms:**

A Planning Board consisting of five (5) members and one (1) associate member shall be elected for terms of three (3) years each. The elections shall be arranged, commencing with the annual election of 2005, so that in each three (3) year cycle the terms of two (2) members shall expire in the first year, the terms of two (2) members shall expire in the second (2<sup>nd</sup>) year, and the term of one (1) member and the associate shall expire in the third (3<sup>rd</sup>) year. Whenever a

member of the Planning Board is absent, or is unable to participate in a particular matter due to a conflict of interest or other disability, the Chair shall seat the associate member to act during such absence or disability.

History: See Charter, Section 3-7(a).

History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§4-8 Powers and Duties:**

The powers and duties of such Board shall be such as are stated in the Massachusetts General Laws and, in addition, it shall make careful studies of the resources, possibilities and needs of the Town and make plans for the development of the Town. The Planning Board shall make an annual report providing information regarding the condition of the Town and any plans or proposals for its development, with estimates of the cost thereof. The Planning Board shall also provide a written report and recommendation on any article appearing in an Annual or Special Town Meeting Warrant proposing any changes to the Zoning Bylaws of the Town.

History: See Charter, Section 3-7(b).

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§4-9 Vacancies:**

Vacancies occurring in the Board shall be filled as provided in MGL C. 41, §11.

**§4-10 Public Hearings:**

The Planning Board, upon its own initiation, may, and upon the petition of ten (10) persons shall, hold public hearings, fourteen (14) days' public notice of which shall be given, for the consideration of any amendments to the Zoning Map or to the Zoning Bylaws,<sup>1</sup> and report to a Town meeting its recommendations as to what action should be taken.

**§4-11 Appointment of Consulting Engineer:**

The Planning Board may appoint a consulting engineer.

## **CHAPTER 5 – OFFICERS AND EMPLOYEES**

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

### **ARTICLE I – Town Manager**

History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§5-1 Appointment; Qualification; Term:**

The Board of Selectmen shall appoint a Town Manager to serve for an indefinite term. The Town Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. A Town Manager need not be a resident of the Town or of the Commonwealth at the time of appointment but shall establish a residence within the Commonwealth within one (1) year following appointment. The Board of Selectmen shall, annually, fix the compensation for such person within the amount appropriated for such purpose. The Town Manager shall not have served in an elective office in the Town government for at least twelve (12) months prior to appointment. The Town Manager shall devote full time to the office and shall not hold any other public office, elective or appointive, nor actively engage in any other business, occupation or profession during such service, unless such action is approved, in advance and in writing by the Board of Selectmen. The Board of Selectmen shall provide for an annual review of the job performance of the Town Manager, which shall, at least in summary form, be a public record.

History: See Charter, Section 4-1.

History: Added 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

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<sup>1</sup> Editor' Note: See Ch. 174, Zoning.

**Powers and Duties:**

The Town Manager shall be the chief administrative officer of the Town, directly responsible to the Board of Selectmen. The powers and duties of the Town Manager shall include, but are not intended to be limited to the following:

- A. To supervise, direct and be responsible for the efficient administration of all functions and activities in the executive/administrative branch of the Town government for which the office of the Town Manager is hereby given the authority, responsibility and control by the Charter.
- B. To appoint, and in appropriate circumstances to remove, subject to the provisions of the civil service law and of any collective bargaining agreements as may be applicable, all department heads, Town officers, and members of multiple member bodies for whom no other method of selection is provided by the Charter. Appointments made by the Town Manager shall be subject to confirmation by the Board of Selectmen. Copies of the notices of all such appointments shall be posted on the Town bulletin board when submitted to the Board of Selectmen. Except as otherwise specifically provided in the Charter, the Town Manager shall appoint all other Town employees, except those serving under Town officers or multiple member bodies elected directly by the voters. The Town Manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- C. To be responsible for the administration of a Town personnel system, including, but not limited to personnel policies and practices, rules and regulations, including provisions for an annual employee performance review, personnel bylaw and collective bargaining agreements entered into by the Town. The Town Manager shall also prepare and keep current a plan establishing the personnel staffing requirements for each Town agency, except the School Department.
- D. To attend all regular and special meetings of the Board of Selectmen, unless unavailable for reasonable cause, and shall have a voice, but no vote, in all of its proceedings.
- E. To assure that full and complete records of the financial and administrative activities of the Town are kept and to render as often as may be required by the Board of Selectmen, but not less than once (1) in each year, a full report of all Town administrative operations during the period reported on, which report shall be made available to the public.
- F. To keep the Board of Selectmen fully advised as to the needs of the Town and shall recommend to the Board of Selectmen and to other Town officers and agencies for adoption such measures requiring action by them as the Town manager may deem necessary or expedient.
- G. To have full jurisdiction over the rental and use of all Town facilities and property except property under the control of the School Committee, the Board of Library Trustees, or the Conservation Commission. The Town Manager shall be responsible for the maintenance and repair of all Town buildings and facilities placed under the Town Manager's control by the Charter, or otherwise.
- H. To prepare and present a proposed annual operating budget for the Town and a proposed capital outlay program for the five (5) fiscal years next ensuing.

- I. To assure that a full and complete inventory of all property of the Town, both real and personal, is kept, including all property under the jurisdiction of the School Committee.
- J. To negotiate all contracts involving any subject within the jurisdiction of the office of Town Manager, including contracts with Town employees, except employees under the School Committee involving wages, hours and other terms and conditions of employment; all such proposed contracts shall be subject to approval or ratification by the Board of Selectmen.
- K. To be the chief procurement officer of the Town responsible for purchasing all supplies, material and equipment for all departments and activities of the Town as provided in MGL C. 30B. The Town Manager shall examine, or cause to be examined, the quantity, quality and condition of all supplies, material and equipment delivered to or received by any Town agency. The Town Manager shall be responsible for the disposal of all supplies material and equipment which have been declared surplus by a Town agency.
- L. To see that all of the provisions of the General Laws, of the Charter, Town Bylaws and other votes of the Board of Selectmen which require enforcement by the Town Manager or officers subject to the direction and supervision of the Town Manager are faithfully executed, performed or otherwise carried out.
- M. To inquire, at any time, into the conduct of office or performance of duties of any officer or employee, department, board, commission or other Town agency.
- N. To reorganize, consolidate or abolish Town agencies serving under the supervision of the Town Manager, in whole or in part, provide for new Town agencies and provide for reassignment of powers, duties and responsibilities among such agencies so established or existing.
- O. To attend all sessions of all Town Meetings and answer all questions raised by voters which relate to Warrant articles and to matters over which the Town Manager exercises any supervision.
- P. To perform any other duties as are required to be performed by the Town Manager by bylaw, administrative code or votes of the Board of Selectmen.  
History: See Charter, Section 4-3.  
History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

### **§5-3 Delegation of Authority:**

The Town Manager may authorize any subordinate officer or employee to exercise any power or perform any function or duty which is assigned to the office of the Town Manager, provided, however, that all acts performed under any such delegation shall at times be deemed to be the acts of the Town Manager.

History: See Charter, Section 4-2.

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

### **§5-4 Acting Town Manager:**

- A. **Temporary Absence:** By letter filed with the Town Clerk, the Town Manager shall designate a qualified Town administrative officer or employee to exercise the powers and perform the duties of Town Manager during a temporary absence. During a temporary absence the Board of Selectmen may not revoke such designation until at least ten (10) working days have elapsed, whereupon it may appoint another qualified Town administrative officer or employee to serve until the Town Manager shall return.

- B. **Vacancy:** Any vacancy in the office of the Town Manager shall be filled as soon as possible by the screening committee established pursuant to Charter §4-1 and the Board of Selectmen, but, pending such regular appointment the Board of Selectmen shall appoint a qualified Town administrative officer or employee to perform the duties of the office on an acting basis. Such temporary appointment may not exceed (6) six months but one (1) renewal may be voted by the Board of Selectmen not to exceed three (3) months. The compensation to be paid to such person shall be established by the Board of Selectmen.
- C. **Powers and Duties:** The powers of a temporary or acting Town Manager under (A) and (B) above, shall be limited to matters not admitting of delay and shall include authority to make temporary, emergency appointments or designations to Town office or employment but not to make permanent appointments or designations.  
History: See Charter, Section 4-1.  
History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006

#### **§5-5 Removal and Suspension:**

The Board of Selectmen may, by a majority vote of the full Board, terminate and remove, or suspend, the Town Manager from office in accordance with the following procedure:

- A. The Board of Selectmen shall adopt a preliminary resolution of removal by the affirmative vote of a majority of all its members, which must state the reason or reasons for removal. This preliminary resolution may suspend the Town Manager for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered to the Town Manager forthwith.
- B. Within five (5) days following delivery of the preliminary resolution the Town Manager may request a public hearing by filing a written request for such hearing with the Board of Selectmen. This hearing shall be held at a meeting of the Board of Selectmen not later than thirty (30) days after the request is filed or earlier than twenty (20) days. The Town Manager may file with the Board of Selectmen a written statement responding to the reasons stated in the resolution of removal provided the same is received at its office more than forty-eight (48) hours in advance of the public hearing.
- C. The Board of Selectmen may adopt a final resolution of removal, which may be made effective immediately, by the affirmative vote of a majority of all of its members not less than ten (10) nor more than twenty-one (21) days following the date of delivery of a copy of the preliminary resolution to the Town Manager, if the Town Manager has not requested a public hearing; or, within ten (10) days following the close of the public hearing if the Town Manager has requested one.
- D. In the event of a removal or suspension of a Town Manager pursuant to this section the authority of the Town Manager to appoint a temporary or acting Town Manager shall be suspended and the assistant Town Manager, if any, shall forthwith be the acting Town Manager subject to a majority vote of the Board of Selectmen to substitute another person to serve as acting Town Manager.  
History: See Charter, Section 4-5.  
History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006

## **ARTICLE II – Personnel Administrative Plan**

**History: Adopted as Ch.2, Article 2.9 of the 1980 Code.**

### **§5-6 Personnel Administration:**

- A. A Personnel Classification and Administration Plan shall be established by the Town Manager which shall promulgate, and may from time to time, amend rules and regulations, after notice and hearing thereon, subject to the approval of the Town Manager and not contrary to any law:
1. To establish and administer a classification of the positions of all Town employees, other than those filled by popular election, and those under the direction and control of the School Committee, into groups and classes doing substantial similar work or having substantially similar responsibilities, and to establish maximum and minimum salaries for such employees and for periodic step increases based on length of service.
  2. To establish and administer a personnel policy dealing with working hours, overtime, vacations, leave for sickness, military service, jury duty, bereavement, leave of absence, tenure, group insurances and any other matter properly includable as personnel policy which shall be applicable to those employees subject to the employee classification plan described in Subsection A herein.
- B. Such rules and regulations shall become effective upon their promulgation by the Personnel Board and approval by the Board of Selectmen and shall be consonant with those in effect by private industry and other Massachusetts governmental units.

**History: See Charter, Section 4-2(c).**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

### **§5-7 New and Full-Time Positions:**

- A. Permanent full-time and part-time positions proposed by the Town Manager may be created and funded at Annual Town Meetings by a majority vote.  
**History: See Charter, Section 4-2(c).**  
**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**
- B. Permanent full-time or part-time positions may be created and funded at Special Town Meetings by a two-thirds (2/3rds) vote but only if the Board of Selectmen, following consultation with the Finance Committee, has determined by a four-fifths (4/5ths) vote that the purpose of the new position is extraordinary.
- C. The salary classification of full-time and part-time positions may be modified at Annual Town Meetings by majority vote.
- D. The salary classification of full-time and part-time positions may be modified at Special Town Meetings by a two-thirds (2/3rds) vote and only if the Board of Selectmen, following consultation with the Finance Committee, has determined by a four-fifths (4/5ths) vote that the purpose of the reclassification is extraordinary.  
**History: Added 12-2-1985 STM, Article 53, approved by Attorney General 2-11-1986.**  
**History: Amended -1-1989 STM, Article 59, approved by Attorney General 7-5-19-1989.**

### **§5-8 Appropriation for Fringe Benefits:**

No new full-time or regular part-time position may be created or filled by any board or official of the Town except in conformity with the Personnel Administration Plan, if applicable, and unless the Town Meeting article creating or upgrading the position from part-time to full-time

includes an appropriation for fringe benefits for the first fiscal year. For purposes of this section, “fringe benefits” shall consist of any medical insurance, life insurance and pension reserve fund payments as the Treasurer determines are needed. Nothing in this section shall change the percentage of medical and life insurance payments for Town employees previously authorized by the Town.

**History: Added 8-25-1986 STM, Article 53, approved by Attorney General 10-17-1986.**

### **ARTICLE III – Treasurer/Tax Collector**

**History: Adopted as Ch. 2, Article 2.2, of the 1980 Code.**

#### **§5-9 Appointment; Term of Office:**

The Treasurer/Tax Collector shall be appointed by Town Manager for a term to be determined by the Town Manager.

**History: See Charter, Section 4-2(b).**

#### **§5-10 Authority to Engage Legal Counsel:**

The Treasurer is authorized to engage counsel at the expense of the Town for the purpose of prosecuting any action at law under the provisions of the public statutes relating to suits on bonds, notes or other securities.

#### **§5-11 Statutory Duties:**

The Collector of Taxes shall carry out all duties imposed on or by the General Laws of the Commonwealth.

#### **§5-12 Additional Duties:**

The Collector of Taxes, ex-officio, shall be the Town Collector, and it shall be his/her duty under the title of Town Collector to collect all accounts due and payable to the Town, excepting interests on investments of sinking or trust funds, the collection of which is not otherwise provided for by statute, bylaw or vote of the Town.

#### **§5-13 Action Upon Inability to Collect:**

If the Town Collector is unable to make prompt collection of the accounts committed to him/her under this Article, he/she shall so certify to the Selectmen, who shall enforce collection by suit or otherwise, in accordance with the provisions of the statutes and the bylaws of the Town.

#### **§5-14 Payment Authorizations:**

Funds belonging to the Town in the hands of the Treasurer shall only be withdrawn from the bank on orders countersigned by at least two (2) of the Selectmen.

**History: Amended 5-2-1983 ATM, Article 45, approved by Attorney General 10-12-1983.**

### **ARTICLE IV – Town Counsel**

**History: Adopted as Ch. 2, Article 2.4 and Sec. 2.13.2 of the 1980 Code.**

#### **§5-15 Term of Office:**

The Selectmen, annually in June, shall appoint a Town Counsel to hold office for the term of one (1) year from the first day of July following and until his/her successor is appointed and qualified.

**§5-16 General Powers and Duties; Compensation:**

He/she shall act as the legal advisor and solicitor of the Town and as head of the Legal Department and shall receive such salary or compensation therefor as the Selectmen shall determine.

**§5-17 Removal from Office:**

The Selectmen shall remove the Town Counsel from office if, in their opinion, the interests of the Town so require and shall fill any vacancy in said office by new appointment.

**§5-18 Accommodations:**

The Selectmen shall provide suitable space for the Town Counsel, as head of the Legal Department, in the Town Office Building. All books, records and documents assembled by the Town Counsel in connection with the Town's legal affairs shall be kept in files properly indexed in the offices of the Legal Department for convenient reference by the Selectmen and the Town Counsel's successor in office.

**§5-19 Attendance at Town Meetings:**

The Town Counsel shall attend all Town Meetings and shall, at the request of the Moderator, advise the meeting on questions of law relating to the subject matter of any article in the Warrant and as to the form of proposed votes or motions or the legality of any particular action proposed to be taken in the meeting.

**§5-20 Advice to Other Boards:**

Subject to the approval of the Board of Selectmen, all elective or appointive Town officers, special or standing committees, boards or departments may obtain, orally or in writing, the advice or opinion of the Town Counsel as to any function of their respective offices or on any specific question of law in relation thereto.

**§5-21 Legal Proceedings by Selectmen:**

The Selectmen shall be the agents of the Town to prosecute and defend suits to which the Town, in its corporate capacity, may be a party; and as agents of the Town, they shall have full authority to prosecute or defend all suits at law or in equity and all civil and criminal proceedings and litigation to which the Town, or any Town officer in his/her official capacity, is a party or in which its rights, duties and interests may be the subject of adjudication.

**§5-22 Compromise and Settlements:**

The Selectmen shall have full authority, as agents of the Town, with the advice and consent of the Town Counsel, to compromise and settle all claims or suits against the Town if, in their opinion, such claims cannot be defended advantageously or successfully.

**§5-23 Reports of Accidents:**

Whenever any accident occurs on a way, involving personal injury or property damage by reason of an alleged defect or want of repairs of such ways, the Superintendent of Streets or any police officer or other Town official or employee cognizant of the same shall forthwith make written report of such accident to the Town Counsel containing all available information useful in defending a claim or suit against the Town founded on such alleged defect or want of repair.



**§5-24 Assignment of Police Officer:**

The Chief of Police, at the request of the Town Counsel and by order of the Selectmen, shall assign a competent police officer to the legal department to act under the direction of the Town Counsel in the investigation of claims against the Town and to assist him/her in the trial and preparation for trial of any litigation to which the Town is a party.

**§5-25 Consultation with Town Departments:**

All departments are authorized and empowered to consult the Town Counsel at any time in connection with their duties, subject to the provisions of §5-20 of this Article.

**ARTICLE V1 – Director of Public Works**

**History: Adopted 5-7-1984 ATM, Article 17, approved by Attorney General 9-17-1984.**

**§5-26 Appointment; Term of Office:**

The Town Manager shall appoint a Director of Public Works for a term not to exceed three (3) years.

**History: See Charter, Section 4-2(b).**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

**§5-27 Powers and Duties:**

The Director of Public Works shall, under the direction of the Board of Selectmen, have full charge of all public ways, sidewalks, storm drains and maintenance of all Town buildings and grounds, except those lands under control of the Conservation Commission.

**§5-28 Authority:**

The Director of Public Works is authorized to issue permits for work to be performed upon Town highways or sections thereof.

**ARTICLE VI – Filling of Appointed Positions**

**§5-29 Authority:**

The Selectmen and Town Manager, respectively, shall fill the following appointed positions as indicated hereafter, with preference being given to residents of the Town. Any person appointed to any position shall be sworn to the faithful performance of said position by the Town Clerk prior to assuming the position. Once a person is so sworn it shall not be necessary in any subsequent year where the same person is reappointed to the same position to again be sworn.

**History: Added 10-5-1992 ATM, Article 21, approved by Attorney General 1-11-1993**

**§5-30 Positions:**

A. The Town manager shall appoint a Tree Warden for a term of one (1) year.

B. The Selectmen may appoint a Leisure Services Committee

**History: Amended 5-3-1982 ATM, Article 17, approved by Attorney General 9-7-1982.**

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<sup>1</sup> Editor's Note: This Article repealed a former Article entitled "Superintendent of Streets."

- C. The Town Manager may appoint a Director of Leisure Services to oversee recreation and youth services and committee education.  
History: Amended 5-3-1982 ATM, Article 17, approved by Attorney General 9-7-1992.  
History: Amended 12-3-1984 STM, Article 38.  
History: Amended 5-1-1989 STM, Article 44, approved by Attorney General 7-5-1989.
- D. The Town Manager shall appoint the Harbormaster and may appoint Assistant Harbormasters to terms of one (1) year.
- E. The Selectmen shall appoint Town Constables for terms of one (1) year.
- F. The Town Manager shall appoint an Inspector of Gas Piping and Gas Appliances, pursuant to MGL C. 143, §3.
- G. The Selectmen shall appoint a Board of Registrars, consisting of four (4) members, one (1) of whom shall be the Town Clerk, under the provisions of MGL C. 51, §15.
- H. The Selectmen shall appoint a Shellfish Constable and may appoint Deputy Shellfish Constables, pursuant to the provisions of MGL C. 130, §98, for a term of three (3) years.
- I. The Town Manager shall appoint an Inspector of Buildings, pursuant to the provisions of MGL C. 143, §3.
- J. The Town Manager shall appoint an Inspector of Wires, pursuant to the provisions of MGL C. 166, §32.
- K. The Town Manger shall appoint a Dog Officer in accordance with MGL C. 140, §11.
- L. The Selectmen may appoint a Cemetery Commission.  
History: Amended 5-3-1982 ATM, Article 17, approved by Attorney General 9-7-1982.
- M. The Town Manager may appoint a Sealer of Weights.  
History: Amended 5-3-1982 ATM, Article 17, approved by Attorney General 9-7-1982.
- N. The Selectmen may appoint a licensing agent to assist the Board with respect to all licenses and permits within its jurisdiction.  
History: Added 5-3-1982 ATM, Article 17, approved by Attorney General 9-7-1982.
- O. The Selectmen may appoint a Youth Commission.  
History: Added 5-6-1985 ATM, Article 6.
- P. The Town Manager shall appoint one (1) or more Herring Wardens for terms of one (1) year.  
History: Amended 12-2-1985 ATM, Article 52, approved by Attorney General 2-11-1986.
- Q. The Selectmen shall appoint regular and associate members to the Shellfish Commission to fill vacancies.  
History: Amended 12-2-1985 STM, Article 48, approved by Attorney General 2-11-1986.

## **ARTICLE VII – Assistant Town Manager**

History: Added 10-20-2008 ATM, Article 13, approved by Attorney General 2-11-2009.

### **§5-31 Appointment; Term of Office:**

The Town Manager shall appoint an Assistant Town Manager for a term to be determined by the Town Manager.

**§5-32 Powers and Duties:**

The Assistant Town Manager shall serve under the direction of the Town Manager, and shall perform such duties and tasks as may be assigned or delegated to him/her by the Town Manager. In the absence of the Town Manager, the Assistant Town Manager shall have the authority to exercise the powers, duties and responsibilities of the Town Manager as established by General Law, the Charter or these Bylaws.

**§5-33 Oversight of Municipal Finance Department:**

The Assistant Town Manager shall coordinate the day-to-day departmental operations of the Offices of the Treasurer/Collector, Town Accountant and Director of Assessing. The department heads of said departments shall report directly to the Assistant Town Manager, who shall have the full authority vested in the Town Manager by General law, the Charter or these bylaws to oversee and coordinate the departmental functions and operations of said office. The Assistant Town Manager shall periodically, or at the request of the Town Manager, report to the Town Manger with respect to the functions and operations of said offices.

## **CHAPTER 6 – FINANCES**

History: Adopted by the Town of Mashpee: Art. I, as Ch. 2, Art. 2.13, Sec. 2.13.3, of the 1980 Code

History: Art. ii, as Ch. 3, Art. 3.1, of the 1980 Code.

History: Art. III, as Ch. 3, Art. 3.2, of the 1980 Code.

History: Art. IV, as Ch. 3, Art. 3.3, of the 1980 Code.

History: Art. V, as Ch. 3, Art. 3.4, of the 1980 Code.

History: Art. VI, as Ch. 3, Art. 3.5, of the 1980 Code.

History: Art. VII, 5-17-1982 Annual Town Meeting, Article 21; Article VII, 5-3-1982 Annual Town Meeting, Article 23, approved by Attorney General 9-7-1982.

Amendments noted where applicable

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

## **ARTICLE I – Debts to Town**

History: Adopted as Ch. 2, Article 2.13, Sec. 2.13.3 of the 1980 Code.

**§6-1 Deduction from Payment Due:**

Any persons indebted to the Town for taxes or otherwise shall have such debt deducted before payment by the Treasurer from any sum due him/her from the Town for work on roads or for any other service performed, except as otherwise prohibited by law.

## **ARTICLE II – Contracts**

History: Adopted as Ch. 3, Article 3.1, of the 1980 Code.

**§6-2 Public Bidding:**

All procurement contracts for supplies, services and materials shall be subject to the provisions of MGL C. 30B. In accordance with the provisions of §12(b) of said Chapter 30 B, all such contracts may, in the discretion of the Town body or officer authorized to award same, be entered into for a period of up to five (5) years, including any renewal, extension or option related thereto.

History: Amended 5-7-1984 ATM, Article 64, approved by Attorney General 9-17-1984.

History: Amended 10-1-1990 ATM, Article 19, approved by Attorney General 12-18-1990.

History: Amended 10-21-2013 ATM, Article, 15, approved by Attorney General 12-16-2013.

**§6-3 Expenditures:**

All purchases of equipment, supplies and materials, the estimated value of which amounts to one thousand dollars (\$1,000) or more, shall be submitted to the Town Manager or its designee by the head of the department for approval prior to execution of the purchase agreement.

History: Amended 5-7-1984 ATM, Article 65, approved by Attorney General 9-17-1984.

History: Amended 5-4-1992 STM, Article 10, approved by Attorney General 8-26-1992.

History: See Charter, Section 4-2(k).

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§6-4 Awarding of Contracts:**

On all contracts for which advertisement is required pursuant to §6-2, the award shall be made to the lowest responsible bidder. In making the award, preference shall be given to any bidder who is a resident of or who maintains a business in the Town of Mashpee, but only insofar as the same does not represent a substantial financial loss to the Town.

History: Amended 5-7-1984, ATM, Article 66, approved by Attorney General 9-17-1984.

**§6-5 Bid Openings:**

All bids for advertised contracts of the Town shall be returnable at the Town Manager's office on a specific date and hour and shall be publicly opened and read by Town Manager at that time.

History: See Charter, Section 4-2 (k).

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§6-6 Collective Purchasing:**

The provisions of §6-2, §6-4 and §6-5 shall be deemed to have been complied with on all purchases made through the State Purchasing Agent or the County Purchasing Agent.

History: Amended 5-3-1982 ATM, Article 15, approved by Attorney General 9-7-1982.

**ARTICLE III – Transportation Reimbursement**

History: Adopted as Ch. 3, Article 3.1 of the 1980 Code.

**§6-7 General Provisions:**

When any employee, officer, member of any unpaid board or committee or member of the Board of Assessors travels within or outside the Town of Mashpee or when any member of a paid elected Board travels outside the Town of Mashpee on business connected with official duties, he/she shall be entitled to receive reimbursement on the following basis; if travel is by rail, water, bus, plane or any public transportation, the amount of economy rate fare; if travel is by private motor vehicle, the current rate of reimbursement for such mode of travel established by the Internal Revenue Service in its most recent published schedule. Reimbursement of travel expenses shall be made only with prior approval of the travel by the department head.

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

**§6-8 Requests for Reimbursement:**

Requests for reimbursement shall be made on forms approved by the Town Manager and shall include, at a minimum, the following: date of travel, destination, purpose, odometer readings at start and end of trips and signature of traveler. The Town Manager is authorized to prepare a standard mileage schedule between the Town and other communities which shall be the basis of reimbursement for travel to points outside of the Town of Mashpee.

History: Amended 11-9-1981 STM, Article 30, approved by Attorney General 2-16-1982.

History: See Charter, Section 4-2 (A).

## **ARTICLE IV – Annual Audit**

**History: Adopted as Ch. 3, Article 3.3 of the 1980 Code.**

### **§6-9 State Audit:**

There shall be an annual audit of the Town's accounts under the supervision of the Director of Accounts of the Department of Revenue, in accordance with the provisions of MGL C. 44, §35.

### **§6-10 Independent Audit:**

The Finance Committee shall annually provide for an outside audit of the books and accounts of the Town to be made by a certified public accountant, or a firm of certified public accountants, who have no personal interest, direct or indirect, in the fiscal affairs of the Town or any of its officers. The Town Manager shall annually provide a sufficient sum of money to conduct the audit. The award of a contract to audit shall be made by the Finance Committee on or before September 15th of each year. The report of the audit shall be filed in the final form with the Finance Committee not later than March 1st in the year following its award and copies shall be placed on file in the office of the Town Clerk.

**History: See Charter, Section 6-9I.**

## **ARTICLE V – Annual Inventory**

**History: Adopted as Ch. 3, Article 3.4 of the 1980 Code.**

### **§6-11 Preparation Requirement:**

All department heads of the Town shall prepare and submit to the Town Manager between May 15th and no later than June 30th of each year a complete inventory of all Town-owned property for which their departments are responsible.

**History: See Charter, Section 4-2(I).**

## **ARTICLE VI – Disposal of Town Equipment**

**History: Adopted as Ch. 3, Article 3.5 of the 1980 Code.**

### **§6-12 Procedure:**

As authorized in MGL C. 40, §21, Clause 11, any equipment to be disposed of by various officers or departments of the Town shall first be offered to any other office or department of the Town who may require it.

## **ARTICLE VII – Capital Improvement Committee and Program (CIP)**

**History: Adopted 5-17-1982 ATM, Article. 21.**

### **§6-13 Establishment of Committee; Membership:**

A Committee, to be known as the "Capital Improvement Program Committee," shall be established to prepare a capital improvement program. This Committee shall perform the duties as specified in the Charter and following sections and shall consist of the following members: The Town Manager, who shall serve as the Chairman of the Committee pursuant to the designation of this position the Coordinator of Capital Programming under Article V of Chapter 27 of the Mashpee Code, a member or designee of the Board of Selectmen, who shall be designated annually by vote of the Board of Selectmen, a member or designee of the Finance Committee, who shall be designated annually by vote of the Finance Committee, the Town Accountant and a member at-large to be appointed annually by the Board of Selectmen.

**History: Charter, Section 6-8.**

**History: Amended 12-2-1985 STM, Article 54, approved by Attorney General 2-11-1986.**

**History: Amended 5-7-2001 ATM, Article 24, approved by Attorney General 8-18-2001.**

**§6-14 Consideration for Proposed Capital Outlays:**

The Committee shall, in accordance with the provisions of Section 6-8 of the Charter, study proposed capital outlays involving the acquisition of land or any expenditure of twenty five thousand dollars (\$25,000) having a useful life of at least three (3) years. All officers, boards and committees, including the Selectmen and School Committee, shall, by September 1 of each year, give to such Committee, on forms prepared by it, information concerning all projects anticipated by them, i.e., involving the acquisition of land or an expenditure of twenty five thousand dollars (\$25,000) having a useful life of at least three (3) years. The Committee shall consider the relative need, timing and cost of these expenditures and the effect each will have on the financial position of the Town. All Town and School vehicle purchases or leases regardless of the cost shall be submitted through the Capital Improvement Committee and Program.

History: Amended 5-7-2001 ATM, Article 24, approved by Attorney General 8-18-2001.

History: Amended 5-1-2006 ATM, Article 17, approved by Attorney General 10-26-2006.

**§6-15 Preparation of Annual Report:**

History: Amended 10-7-1996 ATM, Article 53, approved by Attorney General 12-9-1996.

- A. The Committee shall prepare and submit to the Town Manager, by the second (2<sup>nd</sup>) Monday in January, an annual written report containing a Capital Improvement Program for the following fiscal year. The Town Manager shall submit the Capital Improvement Program to the Finance Committee by the first (1<sup>st</sup>) Monday in February. The Finance Committee will include said Program, including explanations, in its Report to the Spring Annual Town Meeting. The Finance Committee will submit an article to the Board of Selectmen for inclusion in the Warrant of the budget for capital outlays, as recommended by the Capital Improvement Program Committee.

History: See Charter, Section 6-8.

History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.

- B. The Committee shall also prepare a Capital Improvement Program for the following five (5) years for presentation to the Finance Committee. The Finance Committee will include said report from the Capital Improvement Program Committee, including explanations, in its report to the Spring Annual Town Meeting. The Finance Committee will submit an article to the Board of Selectmen for inclusion in the warrant for the Capital Improvement Program for the following five (5) years as recommended by the Capital Improvement Program Committee.
- C. The Committee may make such investigations and hold such hearings as it may deem necessary but shall hold at least one (1) public hearing annually during the Committee's deliberations on capital projects, said hearing to be held following notice published in a newspaper of general circulation in the Town.

**§6-16 Effect of Program:**

Such Capital Improvement Program, after its adoption by Town Meeting action, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, engineering advice, options or appraisals which may be expended for projects listed thereon, but no such expenditure shall be incurred on projects which have not been so approved by Town Meeting action. Such expenditures may also be made as to projects approved by the Town through the appropriation of sums in the current or prior years and also for preliminary planning for projects to be undertaken more than five (5) years thence.

**§6-17 Copies of Annual Report:**

Copies of the annual report shall be published and distributed along with the Finance Committee report. The Capital Improvement Program Committee shall deposit the original with the Town Clerk.

**§6-18 Vacancies:**

Wherever any vacancy shall occur on the Committee, it shall be filled by the appointing authority which appointed the member whose position shall have become vacant. Any person appointed to fill a vacancy on the Committee shall hold office for the unexpired term of the person whom he succeeds.

**§6-19 Organization:**

Committee members shall organize at the first (1<sup>st</sup>) meeting following June 30 of each year and choose their own officers, including, at a minimum, a Chairperson and Clerk, and shall serve without compensation, although members may be reimbursed for expenses incurred in performance of duties, subject to Town Meeting appropriation.

**ARTICLE VIII – Reversion of Appropriations to General Fund**

**History: Adopted 5-3-1982 ATM, Article 22, approved by Attorney General 9-7-1982.**

**§6-20 Definitions:**

As used in this Article, the following words shall have the following meanings:

**General Appropriation** - Any appropriation made by Town Meeting which is not a specific appropriation within the meaning of this Article.

**Specific Appropriation** - An appropriation made by Town Meeting which is described within the vote, making the appropriation as being “specific,” and is otherwise a “specific appropriation” under the law.

**§6-21 General Appropriations:**

General appropriations made by the Town Meeting shall continue to revert to the general fund at the close of the fiscal year for which they are made, as provided by law.

**§6-22 Specific Appropriations:**

- A. Unless otherwise provided in a vote of the Town Meeting making a specific appropriation, or unless a specific appropriation has been encumbered by contractual obligations, a specific appropriation shall have a normal life of three (3) years from the commencement of the fiscal year, any funds remaining in that appropriation shall revert to the general fund. A vote making a specific appropriation may provide that the appropriation shall revert to the general fund at the end of any fiscal year.
- B. The Town may, at any time under a proper article in a Warrant, extend the date on which a specific appropriation would otherwise revert to the general fund.
- C. The reversion of the balance of the funds in the specific appropriation account shall include any subsequent transfer of funds to the specific account which remain unexpended on the date of the reversion.

**§6-23 Exception:**

Nothing in this Article shall be construed to affect the right of any creditor of the Town, regardless of the reversion of any appropriation to the general fund.

**§6-24 Use of Stabilization Fund:**

Any stabilization fund established by the Town pursuant to the provisions of M.G.L. C.40, §5B shall be used, and funds shall be appropriated thereto or therefrom, only for the purpose of funding extraordinary and unanticipated expenses of the Town, including capital expenditures. For the purpose of this bylaw, the term “capital expenditures” is defined as costs and expenses related to the acquisition, maintenance or repair of Town owned property, including any improvements thereto. This bylaw shall apply to any stabilization fund existing as of the effective date hereof as well as to any such fund established after the effective date hereof.

**History: Added 10-18-2010 ATM, Article 3, approved by Attorney General 2-15-2011**

## **CHAPTER 7 – PUBLIC RECORDS AND OPEN MEETINGS**

**History: Added 5-3-2004 ATM, Article 17, approved by Attorney General 8-23-2004.**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-13-2006.**

**§7-1 Purpose:**

This bylaw shall be known as the “Public Records and Open Meeting bylaw.” The purpose of this bylaw is to ensure open access to public records and meetings; to provide for adequate disclosure of matters concerning the public interest and the accountability of Town Boards, Committees and Commissions; and to provide for strengthened local control and enforcement of the Commonwealth’s Open Meeting Law, Chapter 39, Sections 23A and B, and the Public Records Law, MGL C. 66, and any related regulations or interpretations issued by the Attorney General or Secretary of State of the Commonwealth in effect at the time of adoption of this bylaw.

A. The Town recognized the importance of:

1. Open public meetings
2. Properly posted public meeting notices
3. Accurate documentation of the record of all public meetings
4. Timely preparation of minutes
5. Timely filing of approved minutes with the Town Clerk
6. Record retention in accordance with State regulations
7. Audio sound (tape) recording of the meetings of key Town Boards, Committees, and Commissions
8. Enforcement of the provisions of this bylaw.

**§7-2 Jurisdiction:**

Because regulatory authorities subject citizens to fees, fines and regulations, and the Town to possible litigation, the Town’s interest is best served by requiring the following to comply with all provisions of this bylaw. The Board of Selectmen, the Board of Assessors, the Planning Board, the Board of Health, the Zoning Board of Appeals, the Conservation Commission, School Committee all hereinafter referred to as “Regulatory Authorities.”

**History: Amended 5-2-2011 ATM, Article 14, approved by Attorney General 8-23-2011**



**§7-3****Requirements:**

- A. All Regulatory Authorities are required to:
  - 1. Post notices of meetings in compliance with MGL C. 39, §23B.
  - 2. Post a copy of the agenda at the Town Clerk's Office one day prior to such meeting and supply to the public sufficient copies of the agenda at each meeting.
  - 3. Document all meetings by written report in the form of minutes pursuant to MGL C. 66, §3, §4, §5A and §6. Such minutes must be approved at the next scheduled meeting, or as soon as possible thereafter, and be filed with the Town Clerk within two (2) business days after approval.
  - 4. Audio sound (tape) record all meetings. Such tapes must be filed with the Town Clerk at the same time as the written minutes are filed.
- B. Waivers of compliance may be granted with respect to §38-3 1 (b) and (d) for reasons which the Town Clerk deems valid and which are not inconsistent with Massachusetts General Laws.
- C. The Town Clerk shall be required to maintain the audio tape records for a period of three (3) years. If, in the opinion of the Town Clerk or Board Chairman, retention is in the best interest of the Town, a longer period may be stipulated.

**§7-4****Other Provisions:**

- A. All other Town Boards, Committees, and Commissions, not specified herein, may elect to audio record their meetings. If such election is made to audio record, some or all meetings, the filing requirements herein shall also apply.
- B. All other town boards, committees, or commissions not specified herein, must post notices of meetings and record the business of their meetings in accordance with this bylaw and Massachusetts General Laws.
- C. Regulatory Authorities shall not be required to provide audio tape recordings of workshop meetings and meetings held in executive sessions.

**§7-5****Administration:**

This bylaw shall be administered by the office of the Town Clerk, who may designate a person(s) to be the administrator(s) of public records. The Town Clerk shall promulgate such rules and regulations as are necessary to administer this bylaw with the approval of the Board of Selectmen who shall hold a public hearing after providing seven (7) days' notice of such hearing. The Town Clerk shall have the full power of enforcement to bring civil or criminal action to enforce the provisions of this bylaw. The Town Clerk must discover or have been made aware of a violation and shall not take action until:

- A. A letter to the violator detailing the item(s) of noncompliance shall be sent within thirty (30) days of the violation; and
- B. The violator shall have been given twenty-one (21) days to remedy the violation or provide sufficient reasons to seek a waiver of compliance. Failure to respond to the Town Clerk within the stated time period shall be sufficient ground for immediate enforcement action.

**§7-6      Purpose:**

A violation of this bylaw may be punished by a fine of three hundred (\$300) dollars per offense.

## **PART II**

### **GENERAL LEGISLATION**



## **CHAPTER 46 – FIRE HYDRANTS**

**History: Added 10-5-1998, ATM, Article 25, approved by Attorney General 1-4-1999.**

### **ARTICLE I – Fire Hydrants**

#### **§46-1 Fire Hydrants:**

- A. To ensure fire safety for the inhabitants of the Town, no obstructions including, but not limited to, plantings, trees, fences, and walls shall be allowed between the street and any fire hydrant and/or within three (3') feet of the sides or read of said hydrant.
- B. No property owner shall place or permit to remain any such obstruction around or about any fire hydrant on his property. If, after fourteen (14) days from receipt of written notice from the Fire Chief or his designee or the Operations Manager of the Mashpee Water District or his designee of an obstructed hydrant a property owner does not remove such an obstruction, said obstruction may be removed by the Town at the owner's expense.

## **CHAPTER 47 – ALARM SYSTEMS**

**History: Adopted by the Town of Mashpee: Article I, as Ch. 4, Art. 4.6, Sects. 4.6.1 and 4.6.2, of the 1980 Code.**

**History: Article II, 5-18-1981 ATM, Article 35, approved by Attorney General 8-19-1981.**

**History: Art. III, 5-3-1982 ATM Article 26, approved by Attorney General 9-7-1982.**

**Amendments noted where applicable.**

### **ARTICLE I – Miscellaneous Provisions**

#### **§47-1 Mechanical Protection Devices:**

- A. It shall be unlawful to install a mechanical protection device that is automatically keyed to and/or listed to the Mashpee Fire Department and Police Department. All such devices installed before the effective date of this section shall be removed within sixty (60) days.
- B. "Mechanical protection device" shall be defined as an electrically operated instrument composed of sensory apparatus and related hardware which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice alarm upon receipt of a stimulus from the sensory apparatus that has detected a physical force or condition inherently characteristic of a fire or an unauthorized intrusion.

#### **§47-2 Smoke or Heat Detectors:**

Hotels, boarding or lodging houses, family hotels or apartment houses containing six (6) or more dwelling units which are not regulated by MGL C. 148, §26A and §26B, shall be equipped with an automatic smoke or heat detector in each dwelling unit and each hallway floor. The head of the Fire Department, as defined in MGL C. 148, §1, shall enforce the provisions of this section. The Town hereby accepts the provisions of MGL C. 148, §26C.

### **ARTICLE II – Fire Alarm Systems**

#### **§47-3 New Structures:**

Any new structure containing more than one (1) dwelling unit to be built in the Town of Mashpee, including but not limited to structures known as condominiums, shall have installed an alarm system so prescribed by the Fire Chief as follows:

- A. Smoke detectors shall be installed on each level, including the basement, of each unit within the structure as prescribed by the Massachusetts State Building Code. These smoke detectors shall be local to the unit and wired on an essential circuit within the unit, such as the kitchen circuit.
- B. There shall be a rate of rise/fixed temperature heat detector installed on each level, including the basement, of each unit within the structure and a prescribed number of heat detectors in each attic space over each unit depending on the size of the attic. There shall be a fixed-temperature heat detector in the room or space which houses the heating plant for each unit or structure. These heat detectors shall be part of a complete, closed alarm system, local to the entire building or structure, therefore sounding around and throughout the entire building or structure. This system will be a low voltage system with a sixty-hour (60) backup. The AC power connection shall connect ahead of the main switch with a locking device and key. The wiring of this system shall be low energy fire alarm wire rated at one hundred six degrees centigrade (106°C.).
- C. Low-voltage alarm system.
  - 1. If the layout of a particular structure calls for common hallways, there shall be smoke detectors in each hallway, which are wired to the low-voltage alarm system, the number and location to be determined by the Fire Chief. These hallway smoke detectors shall be equipped with at least a nine-second (9) delay capacitor and screen. Also, if common hallways exist, there shall be a pull station at either end of the hallway, located as recommended by the Massachusetts State Building Code, and a zone panel box in each common hallway. The number of zones and the location of box shall be negotiable.
  - 2. Within this low-voltage alarm system in each building or structure there shall be installed exterior audible bells or horns and an exterior rotating beacon light which shall be located as prescribed by the Fire Chief and which will be activated by the activation of any warning device within this closed system. These bells or horns shall also be installed in the common hallways, where they exist in any given building or structure. These bells or horns must be loud enough to be heard in any room in any unit within any given building structure.
  - 3. In reference to a new single structure with more than one (1) dwelling unit, a zone panel box or an annunciator panel tied to this closed low-voltage alarm system as prescribed above and designed to indicate all units within said building shall be installed in a location that is clearly visible from the outside of said building.
- D. In reference to more than one (1) new structure, each structure containing more than one (1) dwelling unit, but not more than five (5) multi-unit structures, common to or within the same complex or project and based on the Fire Chief's decision with regard to the layout of said complex or project shall exercise one (1) of two (2) options:
  - 1. Install in each building a zone panel box or annunciator panel tied to the closed low-voltage alarm system, as prescribed above, and able to indicate all units within said building in a location that is clearly visible from the outside of said building.
  - 2. Tie all low-voltage alarm systems, as prescribed above, in all buildings within said complex or project to a common exterior centrally located annunciator panel easily seen by responding fire apparatus, which clearly identifies which building in the complex is experiencing the alarm condition. There shall be at least one (1) telephone line, which is designed to carry an alarm or trouble signal running

from this central annunciator panel to the Underwriters Laboratories approved central monitoring system. In reference to more than five (5) new or existing structures, with all or the majority of these structures containing more than one (1) dwelling unit and located within the same complex or project, each structure's closed low-voltage alarm system, as prescribed above, shall be tied into a common exterior centrally located annunciator panel easily seen by responding fire apparatus which clearly indicates which building in the complex is experiencing the alarm condition. There shall be at least one (1) telephone line, which is designed to carry an alarm or trouble signal running from this central annunciator panel to the Underwriters Laboratories approved central monitoring system.

**History: Amended 5-7-1990 STM, Article 23, approved by Attorney General 10-1-1990.**

- E. Prior to issuing a building permit for any structure addressed in this section, plans for the fire alarm system shall be approved by the Fire Chief or his/her designee prior to installation of the fire alarm system. A permit shall be applied for by the installer and issued by the Fire Chief or his/her designee. Upon completion of installation of the alarm system and prior to the issuance of a use and occupancy permit, the system shall be tested per National Fire Protection Association Standard #72, in the presence of a Fire Department inspector. The fee for this permit shall be set by the Board of Selectmen.

**History: Added 5-7-1990 STM, Article 23, approved by Attorney General 10-1-1990.**

#### **§47-4 Existing Buildings or Structures:**

With regard to existing buildings or structures which are governed by MGL C. 148, §26C, and in addition, those too identified as condominiums and any other multifamily dwellings, buildings or structures within the Town of Mashpee shall have installed alarm systems so prescribed by the Fire Chief as follows:

- A. Smoke detectors shall be installed on each level, including the basement, of each unit within the structures. These smoke detectors shall be local to the unit and wired on an essential circuit within the unit, such as the kitchen circuit or any other essential circuit.
- B. There shall be a rate of rise/fixed temperature heat detector installed on each level, including the basement, of each unit within the structure and a prescribed number of heat detectors in each attic space over each unit depending on the size of the attic. There shall be a fixed-temperature heat detector in the room or space which houses the heating plant for each unit or structure. These heat detectors shall be part of a complete, closed alarm system, local to the entire building or structure, therefore sounding around and throughout the entire building or structure. This system will be a low-voltage system with a sixty-hour (60) battery backup. The AC power connection shall connect or shutoff switch with a locking device and key. The wiring for this system shall be low energy fire alarm wire rated at one hundred six degrees centigrade (106° C.).
- C. If the layout of a particular structure offers common hallways, there shall be smoke detectors in each hallway, which are wired to the low-voltage alarm system, the number and location to be determined by the Fire Chief. Each of these hallway smoke detectors shall be equipped with at least a nine-second (9) delay capacitor and screen. Also, if common hallways exist and if the Fire Chief deems them necessary, pull stations shall be installed at either end of these common hallways, located as recommended by the Massachusetts State Building Code. Also, if deemed necessary by the Fire Chief, an annunciator panel shall be installed by the Fire Chief, an annunciator panel shall be installed in a common hallway with the number of zones and the location of said box negotiable.

- D. Within this low-voltage alarm system within each building or structure there shall be installed exterior audible bells or horns as prescribed by the Fire Chief; there shall be an exterior rotating beacon light located as prescribed by the Fire Chief. The above-mentioned bells or horns shall also be installed in the common hallways, where they exist in any given building or structure. These bells or horns must be loud enough to be heard in any room in any unit within any given building or structure.
- E. The alarm systems mandated by this section for all existing multi-dwelling buildings or structures must comply with the standards set forth herein within the maximum implementation period of twenty-four (24) months after notification by the Fire Chief. Maintenance of all installed systems is crucial. Prior to the acceptance of any system, a service contract or a notarized affidavit must be presented to the Fire Chief verifying that the alarm system is being maintained on at least an annual basis. This maintenance service must be provided by the owner of the structure or structures in the case of an apartment(s) building, hotel, motel, boardinghouse, etc., or by an association formed by a group of owners, as in the case of condominiums. The builder of the condominiums shall include a clause in the deed so stating that the responsibility of the alarm system maintenance will be placed on the association.

**§47-5 Violations and Penalties:**

There will be a penalty fee of twenty-five dollars (\$25) per day for each day of noncompliance of any part of this Chapter. Noncompliance will begin twenty-four (24) months after the date of official notification from the Fire Chief.

**§47-6 Implementation:**

The details of this implementation period shall be worked out prior to the issuance of any permits.

**§47-7 Installation Details:**

The details of installation of the prescribed alarm system are available at the Mashpee Fire Department.

### **ARTICLE III – Operation of Fire Alarms; False Alarms**

**§47-8 Definitions:**

**Alarm System** - An assembly of equipment and devices or a single device, such as a solid state unit, which plugs directly into a one-hundred-ten-volt (110) AC line, arranged to signal the presence of a hazard requiring urgent attention and to which police and/or fire fighters are expected to respond. Fire alarm systems and alarm systems which monitor temperature, smoke, humidity or any other condition not directly related to the detection of an unauthorized intrusion into a premises or an attempted break-in at a premises are included.

**False Alarm**

- A. The activation of an alarm system through mechanical failure, malfunction, improper installation or negligence of the user of an alarm system, or of his/her employees or agents.
- B. Any signal or oral communication transmitted to the Police or Fire Department requesting or requiring or resulting in a response on the part of the Police or Fire



Department when, in fact, there has been no unauthorized intrusion, robbery, burglary, attempted threat or fire or threat of fire.

- C. For the purpose of this definition, the activation of alarm systems by acts of vandals or by acts of God, including but not limited to power outages, hurricanes, tornadoes, earthquakes and similar weather or atmospheric disturbances, shall not be deemed to be a "false alarm."

**User** - The occupant of the premises containing the alarm systems.

#### **§47-9 Control and Curtailment of Signals:**

- A. Every user shall submit to the Police and/or Fire Chief the names and telephone numbers of at least two (2) other persons who are authorized to respond to an emergency signal transmitted by an alarm system who can open the premises wherein the alarm system is installed.
- B. All alarm systems installed after the effective date of this Chapter, which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within ten (10) minutes after activation of the alarm system.
- C. Any alarm system emitting a continuous and uninterrupted signal for more than fifteen (15) minutes between 10:00 p.m. and 6:00 a.m., which cannot be shut off or otherwise curtailed due to the absence of unavailability of the alarm user or those persons designated by him/her under Subsection A of this section, and which disturbs the peace, comfort or repose of a community, a neighborhood or a considerable number of inhabitants of the area where the alarm system is located, shall constitute a public nuisance. Upon receiving complaints regarding such a continuous and uninterrupted signal, the Police or Fire Chief shall endeavor to contact the alarm user or members of the alarm user's family or those persons designated by the alarm user under Subsection A of this section in an effort to abate the nuisance. The Police and/or Fire Chief shall cause to be recorded the names and addresses of all complainants and the time each complaint was made.

#### **§47-10 Violations and Penalties:**

Upon receipt of three (3) or more false alarms within a calendar year:

- A. The Police or Fire Chief may:
  - 1. In writing, order the user to discontinue the use of the alarm.
  - 2. Disconnect any direct connections to the Police or Fire Department.
  - 3. Order that further connections to the communications console in the police or fire station will be contingent upon the user equipping any alarm system with a device that will shut off any audible horn or bell within ten (10) minutes after activation of the alarm system.
- B. The user shall be assessed for twenty-five dollars (\$25) as a false burglar alarm service fee for each false burglar alarm in excess of three (3) occurring within a calendar year. All fees assessed hereunder shall be paid to the Town Treasurer for deposit in the general fund.

**History: Amended 5-7-1990 STM, Article 22, approved by Attorney General 10-1-1990.**

- C. The users of fire alarms shall be assessed, as a service fee, fifty dollars (\$50) for the third (3<sup>rd</sup>) false alarm in a calendar year, one hundred dollars (\$100) for the fourth (4<sup>th</sup>) false alarm, and two hundred dollars (\$200) for the fifth (5<sup>th</sup>) and subsequent false alarms. All fees assessed shall be paid to the Town Treasurer for deposit into the general fund.

**History: Added 5-7-1990 STM, Article 22, approved by Attorney General 10-1-1990.<sup>1</sup>**

- D. Whoever violates a written order of the Police or Fire Chief as set forth in Subsection A of this section shall be punished by a fine not to exceed fifty dollars (\$50) for each offense, and each day of violation continues shall be considered a separate offense.

## **CHAPTER 49 – ALCOHOLIC BEVERAGES**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.5, Sec. 4.5.2, of the 1980 Code.**  
**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Beaches – See Ch. 54**

**Disorderly conduct – See Ch. 76**

**Parades, carnivals, fairs and festivals – See Ch. 123**

#### **§49-1 Consumption by Minors:**

It shall be unlawful for any person who has not attained the age as determined, from time to time, by the General Court of the Commonwealth of Massachusetts as being the lawful age for consumption of alcohol to consume or knowingly have in his/her possession alcoholic beverages on public highways, including vehicles thereon, or in public places within the Town of Mashpee.

#### **§49-2 Violations and Penalties:**

Whoever violates the provisions of this chapter shall be fined in an amount not exceeding fifty dollars (\$50) for each offense.

## **CHAPTER 51 – ALL TERRAIN VEHICLE USE**

**History: Amended 10-18-2004 ATM, Article 44, approved by Attorney General 12-16-2004.**

#### **§51-1 Definitions:**

The following words shall have the indicated meanings for the purposes of this Chapter.

**All-Terrain Vehicle** - Any motor vehicle designed or modified for use over unimproved terrain if used for recreation or pleasure off a public way, as defined in MGL. C. 90, specifically including, but not limited to, “four (4) wheelers”, “three (3) wheelers”, and “dirt bikes”. Vehicles, including, but not limited to, automobiles, trucks and buses, which are legally registered, licensed and insured motor vehicles for the purpose of driving on public ways, including limited access highways, shall NOT be considered an All-Terrain Vehicle for the purposes of this bylaw.

**Operator** - The person riding in or on and in control of the operation of the All-Terrain Vehicle, or the person possessing title to the All-Terrain Vehicle and entitled to the use or possession thereof. Any person observed by a law enforcement authority to be in control of or exercising possession over an All-Terrain Vehicle shall be considered to be the Operator of the vehicle

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<sup>1</sup> Editor’s Note: This Article also provided for the redesignation of former Subsection C as Subsection D.

for the purposes of this bylaw. Persons do not have to be observed actually driving or operating the vehicle to be considered the Operator hereunder.

**Property Owner** - The person or persons whose name appears on the current Deed of Record as the owner of real property, or such agent or lessee of the Property Owner who has been authorized by the Owner to exercise care, custody and control of the subject real property.

**Public Road** - Any road or portion thereof which is owned by, or under the care, custody and control of the United States of America, the Commonwealth of Massachusetts, Barnstable County, the Town of Mashpee or any subdivision, department or agency thereof.

**Private Road** - Any road which is owned by, or under the care, custody and control of an entity or entities other than the United States of America, the Commonwealth of Massachusetts, Barnstable County, the Town of Mashpee or any subdivision, department or agency thereof.

#### **§51-2 Land Owner Permission Required:**

The operator of an All-Terrain Vehicle on any real property within the geographical boundaries of the Town of Mashpee shall be in violation of this bylaw UNLESS one of the following circumstances apply:

- A. The Operator is the Property Owner or a duly authorized Lessee, or immediate family member of the Property Owner or Lessee of the subject of the property.
- B. The Operator has in his possession while operating the All-Terrain Vehicle, a written document, signed by the Property or Road Owner or Lessee, or their authorized agent, specifically permitting the operation of All Terrain Vehicle on such property by the Operator; or,
- C. The All-Terrain Vehicle is on public or private property of a Public or Private Road which has been posted by the Owner or Lessee thereof with signage specifically stating that All Terrain Vehicle operation is permitted on said property or road.

#### **§51-3 Enforcement:**

The provisions of this bylaw shall be enforced by the Mashpee Police Department or any other authorized law enforcement office.

#### **§51-4 Violations and Penalties:**

- A. Any person violating any of the foregoing provisions of this Chapter shall be punished by fines for each offense as specified below. The provisions of MGL C. 40, §21D, providing for noncriminal disposition of violations, shall be applicable and the person taking cognizance of any violation, as an alternative to criminal proceedings, may give the offender a written notice as provided for in said §21D.

- B. Fines for the violation of the bylaw shall be applied as follows:

First Offense	\$100.00
Second Offense	\$250.00
Third Offense	Confiscation of Vehicle

**§51-5 Scope of Bylaw:**

This bylaw is intended to be construed and implemented in accordance with and consistent with provisions of applicable Massachusetts General Laws, and the Regulations promulgated thereunder, relating to the operation of All Terrain Vehicles, including, but not limited to, the provisions of MGL. C. 90B, §20-35 and 323 C.M.R. 3.01, et seq., as amended.

**CHAPTER 54 – BEACHES**

**History: Adopted by the Town of Mashpee: Article I, as Ch. 4, Art. 4.5, Sec. 4.5.12, of the 1980 Code.**

**History: Article II, as Ch. 4, Art. 4.8, of the 1980 Code.**

**Amendments noted where applicable.**

**GENERAL REFERENCES**

**Alcoholic beverages – See Ch. 49**

**Bicycles – See Ch. 56**

**Camping – See Ch. 63**

**Dogs and other animals – See Ch. 79**

**Shellfish – See Ch. 145**

**Use of Waterways – See Ch. 170**

**ARTICLE I – Use of Vehicles**

**§54-1 Prohibited Use:**

All motorized vehicles, including but not limited to all oversand dune buggies, beach buggies, motorcycles, motorized bicycles and trailers as defined in §163-3 of this Code, are prohibited at all times from all banks, beaches, dunes and shores bordering on the ocean or any bay, creek, river, stream, pond, marsh and lake in the Town of Mashpee, except for emergency vehicles and official vehicles of the Town or Commonwealth.

**§54-2 Granting of Exception:**

On any land subject to tidal action, coastal storms, flowage or flooding, the Conservation Commission shall have discretionary authority to grant an exception to the operation of this Chapter to any property owners who can establish hardship and who can demonstrate that no substantial harm will occur to the subject land because of the proposed usage of motorized vehicles. Any exception granted by the Conservation Commission shall be limited to such terms and conditions of usage as is determined by said Commission as necessary to preserve the land and the bordering waters.

**§54-3 Violations and Penalties:**

Any person violating the provisions of this Chapter, shall be punished by a fine not to exceed fifty dollars (\$50) for each offense.

**ARTICLE II – Miscellaneous Provisions**

**§54-4 Fires Prohibited:**

Setting or maintaining fires on all beaches is prohibited, except on approval of the Board of Selectmen and by special written permit therefor issued by the Mashpee Fire Department.

**§54-5      Alcoholic:**

The use of alcoholic beverages, including the bringing of alcoholic beverages onto any of the public beaches, is absolutely prohibited.

**§54-6      Baseball or Softball:**

The playing of baseball or softball on said public beaches is prohibited.

**§54-7      Dogs:**

No dogs shall be brought upon any of said public beaches, nor permitted thereon.

**§54-8      Hours of Operation:**

The Board of Selectmen may regulate the hours that said public beaches are open to the public.

History: Added 11-9-1981 STM, Article 33, approved by Attorney General 2-16-1982.

**§54-9      Littering:**

Leaving litter, trash, rubbish, discarded lunch containers or similar articles upon the public beaches is strictly prohibited.

**§54-10     Motor Vehicle Stickers:**

History: Added 5-2-1988 ATM, Article 75, approved by Attorney General 8-17-1988.

A. It shall be unlawful for any person to transfer to another vehicle, forge or alter a motor vehicle sticker issued by the Town of Mashpee for Town services or to be in possession of a sticker which has been unlawfully transferred, forged or altered.

B. It shall be unlawful for any person to enter a Town beach with a motor vehicle without a motor vehicle beach sticker during the summer beach season. This season will be designated annually by the Leisure Services Director by public notice published in a newspaper of general circulation in the Town at least two (2) weeks prior to the commencement date of the summer beach season.

History: Added 10-1-1990 ATM, Article 13, approved by Attorney General 12-18-1990.

**§54-11     Enforcement:**

The foregoing Chapter may be enforced by the Police Department, all other law enforcement officers, and the Parks and Recreation Department personnel authorized and designated by the Director in writing.

History: Added 5-2-1988 ATM, Article 75, approved by Attorney General 8-17-1988.

**§54-12     Violations and Penalties:**

Any person violating any of the foregoing provisions of this Chapter, shall be punished by a fine of fifty dollars (\$50) for each offense. The provisions of MGL C. 40, §21D, providing for noncriminal disposition of violations of this Chapter, shall be applicable, and the person taking cognizance of any violation, as an alternative to criminal proceedings, may give the offender a written notice as provided for in said §21D.

History: Amended 5-6-1985 ATM, Article 13.

History: Amended 5-2-88 ATM, Article 75, approved by Attorney General 8-17-1988.

## **CHAPTER 56 – BICYCLES**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.5, Sec. 4.5.8, of the 1980 Code.**

**Amendments noted where applicable**

### **§56-1 Registration Requirements:**

No resident shall operate a bicycle within the limits of the Town of Mashpee unless such bicycle is registered in the Town and unless the registration plate issued therefor is attached to the rear of such bicycle. The Police Department shall register all bicycles owned by persons residing within the Town, issue certificates of registration and record the name, address, age of the owner, make and the serial number of the bicycle and registration number issued.

## **CHAPTER 63 – CAMPING**

**HISTORY: Adopted by the Town of Mashpee 12-3-1984 Special Town Meeting, Art. 48.**

**Amendments noted where applicable.**

### **§63-1 Prohibited Activity:**

No person shall set up, camp in or otherwise occupy a tent, automobile or trailer as defined in §163-3 of this Code anywhere within the limits of the Town of Mashpee between the hours of 9:00 p.m. and 6:00 a.m., except to the extent that such is allowed by §163-4 of this Code.

### **§63-2 Violations and Penalties:**

Any person violating the provisions of this chapter shall be punished by a fine not to exceed three hundred dollars (\$300) for each offense.

## **CHAPTER 76 – DISORDERLY CONDUCT**

**HISTORY: Adopted by the Town of Mashpee as Ch. 4, Art. 4.5, Sec. 4.5.3, of the 1980 Code.**

**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Alcoholic beverages – See Ch. 49**

### **§76-1 Public Place Defined:**

“Public place” shall mean any place, structure or building to which the general public has access and a right to resort to for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front, parking lot or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas, parks and beaches.

### **§76-2 Prohibited Acts:**

- A. A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder or nuisance, or if his/her conduct is likely to cause public danger, alarm, disorder or nuisance, he/she willfully does any of the following acts in a public place:
  - 1. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of his/her life, limb or health.
  - 2. Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged.

3. Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another.
4. Behaves in an intimidating, violent or forceful manner at any time, in upon or in the proximity of a public place in such manner that such conduct constitutes a clear and present danger to the free and lawful movement of any person or to the extent that any other person will be, or is likely to be, restrained, enjoined, incapacitated or stopped in his/her lawful exercise of business, occupation, amusement, recreation or any other lawful pursuit.
5. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way or public place when ordered to do so by the Mashpee Police or other lawful authority known to be such.
6. Drinks or consumes any alcoholic beverages or possesses any opened container thereof in the immediate place where he/she is located in any vehicle upon a public highway or while upon a public highway or sidewalk or while on any public area or in any public places not duly licensed for such purposes within the Town of Mashpee during the lawful hours of operation of such licensed premises.  
**History: Amended 10-27-1982 STM, approved by Attorney General 1-11-1983.**
7. Disturbs the peace of another or others by violent, indecent, offensive, hostile, boisterous or obscene conduct, which conduct is designed or calculated or likely to cause anguish or injury to another or others.
8. Throws any missile or object upon or at any person, vehicle, building, tree, sign or other public or private property.
9. Prowls or wanders in or upon the private property of another, or without good reason or visible or lawful business with the owner or occupant thereof, peeks, peeps or peers in any door or window of any building or structure thereon.
10. Damages, befouls, urinates, defecates or disturbs a public place or the property of another so as to create a hazardous, unhealthy or physically offensive condition, or throws, drops or places any bottle, can, paper or other litter in a public place or property of another.
11. Makes or causes to be made without reasonable cause any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby or near to any public highway, road, street, lane, alley, park square or common whereby the public peace is broken or disturbed or the traveling public annoyed.
12. Fails to obey a lawful order to disperse by a police officer, when known to be such an official, where one (1) or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is imminently threatened.
13. Maliciously or without good cause interrupts, harasses or molests the speaker or speakers at any lawful assembly, meeting or gathering, or impairs the lawful rights of others to participate in such assembly, meeting or gathering when such conduct is calculated or likely to provoke disorderly conduct and procedure of the same or to cause turmoil or disturbance at same, after being warned to refrain from such conduct by the person in charge of the assembly, meeting or gathering.
14. Acts in a manner designed, likely or tending to cause or provoke disturbance in any public building or place of business wherein matters affecting the public are

being considered or deliberated and which is designed, likely or tending to interfere with the orderly conduct or procedure of such consideration or deliberation, after being warned by any person in authority to refrain from such conduct.

15. Frequents any public place with the intention to obtain money or other things of value from another or others by illegal or fraudulent schemes, tricks, artifices or devices.
16. Assembles for the purpose of engaging in any fraudulent schemes, devices, artifices or tricks to obtain any moneys or things of value in any place or places from any person or persons.

- B. All pronouns used herein shall be construed in the masculine, feminine or neuter genders, and the term "Person" shall be construed in the singular or plural and shall include real persons, associations or corporations.

### **§76-3 Exemptions:**

This chapter shall not be construed to suppress the right to lawful assembly, picketing, public speaking or other lawful means of expressing public opinion not in contravention of other laws or bylaws nor to infringe upon the right of any law enforcement officer engaged in the performance of his/her duties.

### **§76-4 Violations and Penalties; Noncriminal Disposition:**

- A. Any person who violates §76-2A (1), (2), (3) or (4) shall be subject to a fine of fifty dollars (\$50) for the first (1<sup>st</sup>) offense and one hundred dollars (\$100) for a second (2<sup>nd</sup>) or subsequent offense.
- B. Any person who violates §76-2A (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) or (16) shall be punished by a fine of twenty-five dollars (\$25).
- C. Any such violation shall constitute a separate offense on each successive occurrence.
- D. The provisions of MGL C. 40, §21D, providing for the noncriminal disposition of bylaw violations shall be applicable, and the person taking cognizance of any violation shall have available as an alternative to initiating criminal proceedings the procedure set forth in §21D as aforesaid.

### **§76-5 Effect on Inconsistent Provisions; Severability:**

**History: Amended 5-3-1982 ATM, approved by Attorney General 9-7-1982.**

- A. In the event that any part of this chapter is found to be inconsistent with any other provisions contained in any other sections of the Town Code, it is intended that this particular chapter shall take precedence and control.
- B. In the event that any part of this chapter is declared void for any reason, by any court of competent jurisdiction, the remainder thereof shall continue in full force and effect.

### **§76-6 Public Consumption of Marijuana and THC:**

**History: Added 5-4-2009 ATM, Article 12, approved by Attorney General 5-21-2009**

No person shall smoke, ingest or otherwise use or consume marijuana or tetrahydrocannabinol (THC), as defined in MGL C. 94C, §1 as amended, while in or upon any street, sidewalk way, footway, passageway, stairs, bridge, park, playground, beach, pond, lake, waterway of any



kind, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned or under the control of town; on in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.

This bylaw may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to MGL C. 40 §21, by the Board of Selectmen, the Town Manager, or their duty authorized agents, or any police officer. The fine for violation of this bylaw shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this bylaw shall be in addition to any civil penalty imposed for a violation of M.G.L. C. 94C §32L

## **CHAPTER 79 – DOGS AND OTHER ANIMALS**

**HISTORY: Adopted by the Town of Mashpee: Art. I, Article. 55, 12-2-1985 Special Town Meeting, approved 2-11-1986; History: Art. 64, 5-4-1987 Annual Town Meeting, Art. 64, approved 9-21-1987. Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Beaches – See Ch. 54**

**Noise – See Ch. 120**

## **ARTICLE I – Leashing and Restraint of Dogs**

### **§79-1 Restraint Required:**

No person owning or keeping a dog in the Town of Mashpee shall permit such dog to be kept at large in the Town of Mashpee other than on the premises of the owner or keeper, except if it is on the premises of another person with knowledge and permission of such other person. Such owner or keeper of a dog in the Town of Mashpee, which is not on the premises of the owner or upon the premises of another person with the knowledge and permission of such person, shall restrain such dog.

### **§79-2 Prima Facie Evidence of Violation:**

In any prosecution hereunder, the presence of such dog at large upon premises other than the premises of the owner or keeper of such dog shall be prima facie evidence that such knowledge and permission was not had.

### **§79-3 Capture and Confinement; Return to Owner, Prosecution of Complaint:**

Any dog found to be at large in violation of this chapter shall be caught and confined by the Animal Control Officer, who shall notify forthwith the licensed owner or keeper of said dog, giving the owner or keeper a period of ten (10) days within which to recover the dog. Return of the dog to the licensed owner or keeper shall be dependent upon admission of ownership or the keeping of the dog and the assumption of responsibility by the licensed owner or keeper. The Animal Control Officer may prosecute a complaint against the owner or keeper of any dog taken into his/her custody under this section, as provided for in this chapter and in MGL C. 140, §173A, as applicable.

### **§79-4 Collection of Sum for Upkeep by Town:**

The Animal Control Officer having custody of a dog confined under this chapter shall charge a daily fee to be determined by the Board of Selectmen for each day of confinement for the care of such dog, payable by the owner or keeper thereof. Any sums so collected shall be paid over to the Treasurer or the Town pursuant to MGL C. 44, §53.

**History: Amended 10-7-1991 ATM, Article 21, approved by Attorney General 1-7-1992. History: Amended 5-4-2009, ATM, Article 14, approve by Attorney general 5-21-2009**

## **§79-5 Violations and Penalties:**

### **A. Violation of this chapter shall be punishable as follows:**

**History: Amended 10-7-1991 ATM, Article 22, approved by Attorney General 1-7-1992.**

1. First (1<sup>st</sup>) offense, by a fine of twenty-five dollars (\$25).
2. Second (2<sup>nd</sup>) offense, by a fine of fifty dollars (\$50).
3. Third (3<sup>rd</sup>) offense, by a fine of seventy-five dollars (\$75).
4. Fourth (4<sup>th</sup>) and each subsequent offense, by a fine of one hundred dollars (\$100).

### **B. After the recording of a fourth (4<sup>th</sup>) offense, the Animal Control Officer may request the Chief of Police to hold a hearing pursuant to the provisions of MGL C. 140, §157, and to make disposition of the dog in accordance with the provisions of said law.**

**History: Amended 10-7-1991 ATM, Article 23, approved by Attorney General 1-7-1992.**

## **§79-5.1 Nuisances; Disposal of Waste; Exception; Penalty:**

No person owning or having the care, custody or control of any dog shall permit such dog to soil or defile or commit any nuisance upon any sidewalk, street, thoroughfare, beach or wetland, in or upon any public property or in or upon the property of persons other than the owner or persons having the care, custody of such dog, unless said person picks up any such waste and disposes of the same in a sanitary manner. This section shall not apply to physically handicapped persons in sole custody or control of said dog. The penalty for violation of this section shall be twenty-five dollars (\$25) per offense.

**History: Added 10-4-1993 ATM, Article 34, approved by Attorney General 10-18-1993.**

## **§79-5.2 Penalties for Failure to License a Dog:**

Whoever violates §79-6 shall be subject to a fine of twenty-five dollars (\$25) for each offense. The Town Clerk's Office shall have the authority to assist the Animal Control Officer in issuing non-criminal citations for unlicensed dogs, in accordance with M.G.L. 40, §21.D.

**History: Amended 10-5-1998, ATM, Article 18, approved by Attorney General 1-4-1999.**

## **§79-5.3 Penalties for Failure to Vaccinate a Dog or Cat Against Rabies:**

Whoever violates the provisions of §79-6D shall be subject to a fine of fifty dollars (\$50) for each offense.

**History: Added 10-6-1997 ATM, Article 15, approved by Attorney General 3-9-1998.**

## **§79-5.4 Penalties for Failure to Answer Questions:**

If any person falsely answers questions of a Police Officer or Animal Control Officer pertaining to ownership of a dog or cat, he/she shall be punished by a fine of twenty-five dollars (\$25) for each offense.

**History: Added 10-6-1997 ATM, Article. 15, approved by Attorney General on 3-9-1998.**

# **ARTICLE II – Licensing of Dogs; Other Animal Regulations**

## **§79-6 Duties of Owner or Keeper:**

- ### **A. Who must license** - The owner or keeper is responsible for obtaining the license for each dog three (3) months old or older in his/her possession. He/she must also cause the dog to wear a collar or harness to which the dog tag has been attached.

- B. **Licensing period** - All dog licenses shall be issued, upon presentation of a valid rabies certificate, for a period of one (1), two (2) or three (3) years. The licensing period shall run from January 1 through December 31. No license shall extend beyond December 31 of the calendar year in which the rabies certificate expires.

**History: Amended 10-1-2001, ATM, Article 20, approved by Attorney General 12-6-2001.**

1. As soon as a dog is obtained or becomes three (3) months old, if obtained at a younger age.
2. On or before the expiration of thirty (30) days following the arrival of the dog in Town, if brought from another state or country to the Commonwealth temporarily for the sole purpose of showing at dog shows or exhibitions.
3. Within thirty (30) days after moving into Town from another Massachusetts Town. If the dog was licensed in the Town from which he/she moved, a transfer license may be obtained.
4. At the beginning of each licensing period as long as the dog is kept in Town.

- C. **Change of ownership within the Town** - If the ownership of the dog is changed from one Town resident to another, the new owner must forthwith give written notice to the Town Clerk. The Town Clerk shall then change the record of the license of the dog to show the new ownership. A new license certificate or tag does not need to be issued to the new owner during the licensing period in which the change took place. After the expiration of the licensing period, the new owner is responsible for obtaining a new dog license.

- D. **Rabies vaccination**

**History: Amended 10-6-1997 ATM, Article 15, approved by Attorney General 3-9-1998.**

1. The owner or keeper of a dog or cat is responsible for having it vaccinated against rabies. The vaccination must be done by a licensed veterinarian within thirty (30) days after a dog or cat is obtained or at the time it becomes three (3) months old, whichever is later. Dogs and cats must also be revaccinated periodically in accordance with rules and regulations adopted by the Department of Public Health. The owner or keeper must obtain from the veterinarian a vaccination certificate showing the duration of the immunity, or a notarized letter stating that a certificate was issued or a metal rabies tag bearing an expiration date indicating that the certificate is still in effect.
2. The Town Clerk may grant an exemption from the provisions requiring evidence of rabies vaccination if one (1) of the following applies:
  - (a) A dog or cat is less than three (3) months old.
  - (b) The Board of Health has declared the dog exempt for a special period of time. In this case, the owner or keeper would need to obtain a veterinarian's certificate that inoculation is inadvisable because of infirmity, other physical condition or regimen or therapy and present this certificate to the Board.
  - (c) A dog or cat is in transit or has been brought into the Commonwealth temporarily for the sole purpose of showing in dog shows or exhibitions.

**Duties of Town Clerk:**

- A. **General** - The Town Clerk is responsible for issuing the certificates and dog tags, for keeping a record of dog licenses issued and dogs destroyed by the dog officer, accounting for the money collected for licenses and for making out a monthly report covering all licenses issued during the preceding month.
- B. **Completing a license for issuance**
1. The following information shall be obtained from all applicants and maintained for two (2) years on records kept by the Town Clerk for each license issued:
    - (a) The date of issue and no other date.
    - (b) The tag number.
    - (c) The name of the owner or keeper.
    - (d) The address and phone of the owner or keeper.
    - (e) The name of the dog.
    - (f) Breed.
    - (g) Color.
    - (h) Age.
    - (i) Issuing Clerk.
    - (j) The expiration date of the most recent rabies shot.
    - (k) Other data. Enter not over ten (10) descriptive words, as requested by the owner, which further identify the dog, such as a tattoo, number, scars, weight, etc.
  2. Spayed female and neutered male licenses. If an owner requests a spayed female or a neutered male license and the dog is being licensed for the first time in the Town, proof of spaying and neutering must be shown by the owner. Proof may be:
    - (a) A certificate of spaying or neutering signed by the veterinarian who performed the operation.
    - (b) A statement, signed under the penalties of perjury by a veterinarian registered and practicing in Massachusetts, describing the dog and stating that he/she has examined the dog and that it appears to have been spayed or neutered and thereby deprived of the power of propagation.
    - (c) A receipt of a bill from the veterinarian who performed the operation that spayed or neutered the dog.
    - (d) A spayed female license or neutered male license, license certificate or certified copy thereof from another Town if the dog was previously licensed elsewhere.

3. Transfer license. If a dog is permanently moved into the Town of Mashpee, the owner or keeper must, within thirty (30) days of his/her moving into the Town, present the original license certificate and tag to the Town Clerk. The Clerk must take up the license certificate and tag and issue a new license and tag.

**§79-8 Fees:**

- A. There shall be four (4) types of fees to be charged:
  1. Neutered male and spayed female licenses.
  2. Male and female licenses.
  3. Transfer licenses (regardless of sex of dog).
  4. Substitute tags.
- B. The amount of the fee shall be determined by the Board of Selectmen.
- C. The following licenses are exempt from fee:
  1. Dog specifically trained to lead or serve the blind.
  2. Dog specifically trained to serve a deaf person.
- D. Once a dog license fee has been paid to the Town, no part of the fee will be refunded.

**§79-9 Substitute Tags:**

If a tag is lost during a licensing period, the owner must obtain a substitute tag from the Town Clerk. This tag has the year, the name of the Town and the number of original tag stamped on the tag.

**§79-10 Person Convicted of Cruelty to Animals to Forfeit License:**

- A. A dog license shall become void and shall immediately be surrendered to the Clerk if the holder of the license has been found guilty of or penalized for any of the following:
  1. Cruelty to animals.
  2. Mutilation of dogs.
  3. Owning or training a dog or other animal intending that it shall be engaged in an exhibition of fighting.
  4. Being present in a building where preparations are being made for an exhibition of fighting of animals with intent to be present at the time of the exhibition.
  5. Being present, aiding or contributing to an exhibition of fighting of animals.
- B. The Clerk of the court in whose jurisdiction such finding has been made shall be requested to notify the Town Clerk where the guilty person resides. Notification must then be made to the individual involved demanding that the license be surrendered. In addition, the Town Clerk may not issue a dog license or tag to that individual for a period of two (2) years from the date of his/her being found guilty or penalized.

**§79-11 Disposition of Fees:**

The Town Clerk shall receive the money for dog licenses and tags and pay it into the treasury of the Town. The Town Clerk shall furnish a monthly report of dogs licensed to the Animal Control Officer and the Police Department.

**§79-12 Reimbursement for Livestock or Poultry Killed or Injured by Unknown:**

A. The following requirements are necessary for reimbursement:

1. The incident must be reported to the Police or the Animal Control Officer within twenty-four (24) hours of the incident.
2. The claimant must not be the owner of an unlicensed dog at the time of the incident.
3. Damage over fifty dollars (\$50) must be witnessed by at least two (2) Police Officers and the Animal Control Officer.
4. Claims will be based on market value of animals killed, to be judged by age and weight and price per pound, or veterinary bills on injured animals.
5. Only animals being raised for table use or as a livelihood are eligible.
6. Evidence must be present to indicate the loss was caused by a dog, or an eyewitness must attest to this fact.
7. Property must be properly enclosed.
8. Application for reimbursement must be submitted within five (5) days of the incident to the Town Clerk.

B. Forms for application for reimbursement shall be provided by the Animal Control Officer and the Town Clerk.

**§79-13 Veterinarians' Fees for Emergency Treatment of Dogs and Cats Injured on Ways:**

Any veterinarian registered under the provisions of MGL C. 112, §55 or §56A, who renders emergency care or treatment to, or disposes of, a dog or cat that is injured in any way shall receive payment from the owner of such dog or cat, if known or if not known, from the Town, in an amount not to exceed twenty dollars (\$20) for such care, treatment or disposal; provided, however, that such emergency care treatment or disposal shall be for the purpose of maintaining life, stabilizing the animal or alleviating suffering until the owner or keeper of such dog or cat is identified, or for a period of twenty-four (24) hours, whichever is sooner. Any veterinarian who renders such emergency care or treatment to, or disposes of, such dog or cat shall notify the dog officer in the Town and, upon notification, such dog officer shall assume control of such dog or cat.

**§79-14 Dogs-Heritage Park:**

No dogs shall be permitted at Heritage Park.

History: Added 5-7-2007 ATM, Article 13, approved by Attorney General 7-30-2007.

## **CHAPTER 82 – EARTH REMOVAL**

**HISTORY: Adopted by the Town of Mashpee as Ch. 4, Art. 4.4, of the 1980 Code.**  
**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Wetlands - See Ch. 172**

#### **§82-1 Restricted Activity; Hearings:**

No topsoil, subsoil, gravel, sand or other earth may be removed from the Town of Mashpee without first having obtained a permit from the Selectmen. A permit with conditions imposed where necessary may be issued for the removal of topsoil, subsoil, gravel, sand and other earth if the Selectmen, after a public hearing, shall so order, provided that no such permit shall be granted except upon written application and after a public hearing of parties interested and consideration of their evidence by the Selectmen. Notice of said hearing shall be given by publication of the time and place thereof in a local newspaper not less than two (2) weeks before said hearing, the expense of publication to be borne by the petitioner. After such a hearing, the Selectmen shall render a decision in writing, stating the decision and the reason therefor, and file the decision with the Town Clerk and send a copy thereof to the applicant. Such permit may be removed.

#### **§82-2 Replanting Required:**

No topsoil or subsoil shall be removed from place to place within the Town of Mashpee from an area of ground consisting of more than five hundred (500') square feet unless the person removing such topsoil or subsoil shall replant annually the entire area of such removal with rye, vetch, wheat, legumes or other soil-improving plants or plant with a permanent cover crop or reforest the area.

#### **§82-3 Sand and Gravel Pits:**

No sand or gravel shall be removed from place to place within the Town of Mashpee, except that a sand and gravel pit may be opened and used for such purposes if it is located one hundred (100') feet or more from a street line and no more than one (1) entrance and one (1) exit can be used. If such sand and gravel pit is opened and used, the owner shall remove and dispose of all dead trees and stumps when any area thereof amounting to more than five thousand (5,000') square feet becomes unsuited for further use, and, in such case, such area shall be replanted with trees or shrubs to prevent soil erosion.

#### **§82-4 Exceptions:**

The foregoing sections shall not apply to land in public use, nor shall they apply to the case of materials removed or excavated for the purpose of improving, grading, landscaping or cultivating the lot in which the soil, sand, gravel or other earth is located, nor for construction of buildings and the making of public or private improvements.

#### **§82-5 Violations and Penalties:**

Any person violating the provisions of this chapter shall be punished by a fine of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense and two hundred dollars (\$200) for each subsequent offense.

## **Chapter 84 – Erosion and Sedimentation Control**

**History: Added 10-17-2005 ATM, Article 12, approved by Attorney General 3-7-2006.**

### **§84-1 Purpose:**

The purpose of this section is to ensure the prevention or reduction of soil erosion and sedimentation before, during, and after development or redevelopment of a site.

### **§84-2 Applicability:**

- A. No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Erosion and Sedimentation Control Plan, except as specifically exempted herein. Activities subject to this section are those which meet or exceed the following thresholds:
  - 1. Any change of existing grade affecting more than twenty-five hundred (2500') square feet or twenty-five percent (25%) of the lot whichever is smaller;
  - 2. Removal of existing vegetation from more than twenty-five hundred (2500') square feet or twenty-five percent (25%) of the lot whichever is smaller; or
  - 3. Storage of more than one hundred (100) cubic yards of excavation or fill.
- B. Activities which are exempt from the requirement of an approved Erosion and Sedimentation Control Plan are as follows:
  - 1. Construction of a single family dwelling;
  - 2. Emergency activities for the protection of life, property or natural resources;
  - 3. Existing permitted nursery and/or agricultural operations,
  - 4. Construction of a new roadway pursuant to approval by the Planning Board under the Subdivision Control Law; or
  - 5. Projects with a Storm Water Management Plan approved under the provisions of the Town of Mashpee Zoning Bylaw.
- B. An emergency activity is defined as an activity required to address an immediate, unplanned physical threat to persons or property. Examples include, but are not limited to constructing a firebreak to help contain a wild fire and removing vegetation uprooted or damaged by a hurricane. Notification of such activity shall be provided to the Department of Public Works within twenty-four (24) hours of the activity being undertaken. The requirements of this bylaw are in addition to any requirement for a permit from any other local, state or federal regulatory authority, including a permit under the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System program.

### **§84-3 Authority:**

The Department of Public Works shall administer, implement and enforce this bylaw.



#### **§84-4 Plan and Application Requirement:**

- A. The following information shall be included on the Erosion and Sedimentation Control Plan and/or included with the application:
1. Name, address, and telephone number of owner, civil engineer, and person responsible for implementation of the plan;
  2. Street address and Assessors' map and block number of property;
  3. Description of the property, including a meets and bounds description of all boundaries or property lines;
  4. Location of all existing and proposed structures and impervious surfaces;
  5. Location of all existing and proposed storm water facilities, including structures, pipes, swales and detention basins;
  6. A vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies, and other significant geographic features, including all ways and significant structures;
  7. Minimum two (2') foot contours for the existing and proposed topography, using the North American Vertical Datum of 1988 (NAVD88);
  8. A clear delineation of any areas of vegetation or trees identifying all vegetation that is to be removed and all vegetation that is to be preserved;
  9. A clear delineation of any wetlands as defined by Chapter 172 of the Mashpee General Bylaws, any natural or artificial water storage detention areas, and any drainage ditches on the site or within one hundred (100') feet of the property lines;
  10. Design details for both temporary and permanent erosion control structures;
  11. Description of all erosion and sediment control measures proposed to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance;
  12. Information on seeding mixtures and rate, type of sod, method of seedbed preparation, type and rate of fertilizer application, and type of mulching for both temporary and permanent erosion control measures. Seed mixtures and/or sod shall not contain more than ten percent (10%) Kentucky Blue Grass; and
  13. A sequence of activities for development of the site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping.

Plan drawings shall be prepared at a scale of one (1") inch = twenty (20') feet on a sheet not to exceed twenty four (24') inches by thirty six (36") inches.

**§84-5 Control Measures:**

- A. Measures to prevent the erosion of soils from the property and the sedimentation of drainage structures and adjacent wetlands throughout all phases of construction and at the completion of project shall, at a minimum, include the following:
  - 1. Stabilization of cleared areas within fourteen (14) days of clearing or extended inactivity in construction (fourteen (14) days or more) by planting of temporary vegetative cover, mulching, use of erosion control mats or similar measures;
  - 2. Stabilization or covering of soil stockpiles at the end of each workday;
  - 3. Prevention of blowing of dust or sediment from the site by mulching, sprinkling (water), spraying of adhesives or calcium chloride, use of stone, particularly along construction roads, or providing wind barriers; and
  - 4. Provisions for the maintenance of the erosion and sedimentation control measures, including cleaning of drainage structures and affected public/private ways.

**§84-6 Inspections:**

- A. The Director of Public Works or his designee may enter upon the property of the applicant for the purpose of conducting regular inspections to ensure compliance with the approved Erosion and Sedimentation Control Plan and the provisions of this bylaw. These inspections shall be performed at a minimum at the following intervals:
  - 1. Prior to the start of construction;
  - 2. Upon completion of site grading;
  - 3. At close of construction season or prior to any other long-term stops in construction (more than two (2) weeks); and
  - 4. Upon completion of final landscaping
- B. The applicant shall contact the Department of Public Works (DPW) to schedule these inspections. Other inspections may be performed at the discretion of the DPW, including prior to or after a storm event.
- C. During the inspections, the effectiveness of the control measures in place shall be evaluated and additional control measures may be required if deemed necessary by the DPW.

**§84-7 Enforcement:**

- A. **Violations** - Any activity that has commenced or is conducted in violation of this bylaw may be restrained by written order of the Director of Public Works, by injunction or otherwise abated in any manner provided by law.

- B. **Notice of Violation** - When the Department of Public Works determines that an activity is being carried out in violation of the requirements of this bylaw, it shall issue a written notice of violation to the owner of the property and the person responsible for implementation of the plan. The notice of violation shall contain:
1. Name and address of the owner and the person responsible for implementation of the plan;
  2. Address of property upon which the violation is occurring;
  3. Statement of the violation;
  4. Description of the remedial measures necessary to bring the activity into compliance with this bylaw and a schedule for the completion of such remedial action;
  5. Statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- C. **Stop Work Orders** - Persons receiving a notice of violation will be required to halt all construction activities. This “stop work order” will be in effect until the Department of Public Works confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures of this bylaw.
- D. **Penalties** - The penalty for the first (1<sup>st</sup>) violation of this bylaw shall be one hundred (\$100) dollars. The penalty for the second (2<sup>nd</sup>) violation shall be two hundred (\$200) dollars. The penalty for the third (3<sup>rd</sup>) and subsequent violations shall be three hundred (\$300) dollars. Each day that a violation occurs or continues shall constitute a separate offense.
- E. **Non-Criminal Disposition** - As an alternative to criminal prosecution or civil action, the Town of Mashpee may elect to utilize the non-criminal disposition procedure set forth in Article III of Chapter 1 of the General Bylaws of the Town of Mashpee.
- F. **Restoration of Lands** - Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Department of Public Works may take necessary corrective action, the cost of which shall become a lien upon the property until paid, in accordance with the applicable provisions of General Law.
- G. **Holds on Certificates of Occupancy** - Occupation certificates shall not be granted by any Town of Mashpee Enforcement Officer until any corrective actions hereunder have been made and accepted by the Department of Public Works.

**§84-8 Severability:**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

History: Added 10-17-2005 ATM, Article 12, approved by Attorney General 3-7-2006.

## **CHAPTER 96 – GAS STATIONS**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.6, Sec. 4.6.5, of the 1980 Code.**

**Amendments noted where applicable.**

### **§96-1 General Requirements to be met:**

Any gas station established in the Town of Mashpee shall be required to meet all the rules and regulations set forth by the State Fire Marshal's Office and any additional rules and regulations required by the local Fire Chief. Prior to the effective date of any such additional rules and regulations, the Fire Chief shall submit same to the Board of Selectmen for approval, and the same become effective upon said approval.

## **CHAPTER 100 – HANDICAPPED PARKING**

**History: Adopted by the Town of Mashpee 12-2-1985 STM, Article 57, approved by Attorney General 2-11-1986.**

**Amendments noted where applicable.**

### **§100-1 Spaces Required:**

- A. Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings or for any other place where the public has a right of access as invitees or licensees shall be required to provide reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by MGL C. 90, §2, according to the formula provided in MGL C. 40, §21, Subsection 23a, for all parking facilities in excess of fifteen (15) spaces.
- B. Parking spaces designated as reserved under the provisions of paragraph (a) shall be identified by the use of above grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May be Removed at Owner's Expense;" shall be as near as possible to a building entrance or walkway; shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person; and shall be twelve feet (12') wide or two (2') eight-foot (8') wide areas with four (4') feet of cross hatch between them (MGL C.40, §21, Subsection 23b signage/dimensions).

**History: Added 10-7-1996 ATM, Article 44, approved by Attorney General 12-9-1996.**

- C. In addition to the requirements set forth in this bylaw, all handicapped parking spaces shall be designed and maintained in accordance with the requirements of the United State Americans with Disabilities Act ("ADA") and the Massachusetts Architectural Access Board ("AAB"). To the extent that the requirements of this bylaw, the ADA and/or the AAB conflict, the most stringent standards shall apply.

**History: Amended 10-18-2004 ATM, Article 39, approved by Attorney General 12-16-2004**

- D. The provisions of §100-1 shall be enforced by the Building Inspector.

**History: Amended 10-18-2004 ATM, Article 39, approved by Attorney General 12-16-2004.**

### **§100-2 Obstruction of Spaces:**

No person shall leave any unauthorized vehicle unattended within parking spaces designated for use by disabled veterans or handicapped persons as required by this chapter or in such a manner as to obstruct a curb, ramp or any other access designed as a means of egress to a street or public way as provided for in MGL C. 40, §21, Subsection 24. The Police Department will be charged with the enforcement of said violations.

**§100-3 Violations and Penalties:**

The Selectmen shall set the penalty for a violation of this Chapter in accordance with the limits established by the Massachusetts General Laws, Chapter 40, §21, Subsection 24, as amended.

History: Amended 5-6-1997, ATM, Article 28, approved by Attorney General 9-25-1997.

History: Amended 10-17-2005, ATM, Article 11, approved by Attorney General 3-7-2006.

**CHAPTER 103 – HAWKERS, PEDDLERS AND TRANSIENT VENDORS**

History: Adopted by the Town of Mashpee 5-6-1985 ATM, Article 9, approved by Attorney General 9-23-1985<sup>1</sup>.

Amendments noted where applicable.

**§103-1 Definitions:**

For the purpose of this chapter, the definitions of “hawkers”, “peddlers” and “transient vendors” shall be the same as those contained in MGL C. 101, §1 and §13.

**§103-2 License Required for Door-to-Door Sales and Sales From Vehicles:**

No person shall hawk, peddle or expose for sale or barter any foods, wares, periodicals or merchandise from any wagon or vehicle or door-to-door without first obtaining a license from the Director of Standards in accordance with the provisions of MGL C. 101 and from the Chief of Police in accordance with this chapter. The fee for such license shall be in conformance with MGL C. 101, §22.

**§103-3 Inspection of Food-Vending Vehicles or Receptacles:**

No hawker or peddler shall expose for sale any foods, beverages, fruits, vegetables, fish, meats, dairy products, ice cream, frozen desserts or confections until the vehicle or receptacle has been inspected and approved by the Board of Health agent. Vehicles utilized for the selling of frozen desserts or confections must have installed an amber flashing light visible from the front and rear of the vehicle, and such light must be flashing when the vehicle is stopped for the purpose of selling.

**§103-4 Display of License:**

Any person licensed under this chapter shall display the license by affixing it in a prominent place to his/her outer garment.

**§103-5 Obstruction of Free Passage:**

No person licensed under this chapter shall engage in the activities described in §103-2 of this chapter in any manner as to impede foot or vehicular traffic along or to a public way or public sidewalk or any access road or driveway. No person while engaged in such activities shall remain stopped or standing in any one place or within two hundred (200') feet thereof for more than fifteen (15) minutes, unless continuously engaged in transactions.

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<sup>1</sup> Editor's Note: This bylaw also provided for the deletion of former Ch. 4, Art. 4.5, Sec. 4.5.11, of the 1980 Code, Temporary or Transient Vendors.

### **§103-6 Proximity to Schools; Other Location Restrictions:**

No hawker or peddler shall sell or offer for sale any foods, wares or merchandise on any street of the Town within five hundred (500') feet of the Mashpee Middle School or grounds thereof on days when the public school is in session, nor shall any activity be engaged in on a street or sidewalk so as to impede the free flow of vehicular or pedestrian traffic. In addition, the Chief of Police or any of his/her agents may restrict sales in any location within the Town that is determined to be a safety hazard to pedestrian or vehicular traffic.

### **§103-7 Conduct on Closed Streets Prohibited:**

When a street or streets are closed to vehicular traffic within the Town for the purpose of a parade, no hawker or peddler may conduct business within the curb lines of said streets during the hours the streets are closed.

### **§103-8 Exceptions:**

The provisions of this chapter shall not apply to any person conducting a garage sale nor to any person who goes door-to-door to sell goods, wares, periodicals or merchandise on behalf of any group or organization for any of the purposes described in MGL C. 180, §2.

### **§103-9 Violations and Penalties:**

Whoever violates the provisions of this chapter shall be punished by a fine of three hundred dollars (\$300), and each day a violation occurs shall be considered a separate offense.

### **§103-10 Regulation of Flea Markets or Bazaars:**

**History: Added 5-6-1991 STM, Article 15, approved by Attorney General 7-3-1991**

- A. The purpose of this regulation is to secure the protection of the public health and safety of the inhabitants of the Town and to provide for the furnishing of adequate health and safety inspections to accomplish this purpose.
- B. For the purpose of this Section, "flea market" or "bazaar" shall mean any indoor or outdoor facility principally used for the sale of goods, wares or merchandise in one (1) locality by any hawker, peddler or transient vendor who engages in any temporary or transient business in Mashpee and who has not had Town taxes assessed upon his/her stock-in-trade.
- C. The operator of a flea market or bazaar shall be required to request inspection of the facility by the Police Department, Fire Department, Health Department and Building Inspection Department and such other departments as the Board of Selectmen shall determine. Said inspection shall be on a daily basis when the facility is operating or at such lesser interval as determined by the Board of Selectmen, but in no event less than weekly.
- D. The operator of the facility shall be required to comply with a fee schedule program as determined by the Board of Selectmen following a public hearing.
- E. Each hawker, peddler or transient vendor selling or bartering goods, wares or merchandise at the facility shall be required to comply with a fee schedule program as determined by the Board of Selectmen.
- F. Insofar as the same may be applicable, the other definitions and provisions contained in this chapter shall apply hereto.

# CHAPTER 104 – SECONDHAND DEALERS AND SECONDHAND COLLECTORS

History: Added 10-17-2011 ATM, Article 17, approved by Attorney General 2-21-2012

History: Amended 10-15-2012 ATM, Article 8, approved by Attorney General 12-6-2012

## GENERAL REFERENCES

Noncriminal disposition-See Ch. 1, Art. 1.

Jurisdiction of Licensing Authority – See Ch 121, a 121-6F.

Junk on Street – See Ch. 206, Art. 1.1.

### §104-1 Definitions:

**ACCEPTABLE IDENTIFICATION** means either:

- A. A current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or
- B. Two (2) other pieces of current identification, at least one (1) of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

**POLICE CHIEF** means the Chief of Police of the Town of Mashpee or his designee.

**REGULATED PROPERTY** means the following used property:

- A. Precious metals, including but not limited to, any metal valued for its character, rarity, beauty or quality, including gold, silver, copper, platinum or other metals, whether as a separate item or in combination with other items.
- B. Precious gems, including but not limited to, any gem valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or other precious or semi-precious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.
- C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wrist watches, or stop watches.
- D. Sterling silver flatware, including but not limited to, knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.
- E. Any electronic audio, video or photographic and optical equipment along with computer or computer equipment or recordings in any form.
- F. Any power tools or equipment.
- G. Musical instruments.
- H. Sporting equipment and memorabilia.
- I. Automobiles, boats, planes, motorcycles in whole or taken in parts, or any other type machinery.

**SECONDHAND COLLECTOR:** shall have the same meaning as the term "junk collector" MGL C.140, §56.

**SECONDHAND DEALER:** shall have the same meaning as the term “junk dealer” and keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles in MGL C. 140, §54.

The bylaw is applicable to those Secondhand Dealers who are in the business of buying and selling Regulated Property.

**§104-2 Issuance, Renewal and Revocation of Licenses Required:**

- A. Secondhand Collectors and Secondhand Dealers must obtain a license to conduct the activities.
- B. The Licensing Authority of the Town of Mashpee may, after notice and public hearing deny an original or renewal application for a Secondhand Collector License or revoke an issued license if it has probable cause to believe any of the following conditions exist after a public hearing:
  - 1. The applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has owned or operated a Secondhand Dealer or Secondhand Collector business regulated under this regulation or any substantially similar license and, within five (5) years prior to the application date.
  - 2. Has had a Secondhand Dealer or Secondhand Collector License revoked for a reason that would be grounds for denial or revocation pursuant this bylaw; or
  - 3. The Secondhand Dealer or Secondhand Collector business has been found to constitute a public nuisance.
  - 4. The licensee applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has been convicted of a felony or any crime involving a false statement within fifteen (15) years prior to the application date.
  - 5. The applicant has:
    - (a) Knowingly made a false statement in the application.
    - (b) Knowingly omitted information requested to be disclosed in the application.
    - (c) Completed the application with reckless disregard for the truth or accuracy of the statements made therein.
  - 6. A lawful inspection of the Secondhand Dealer or Secondhand Collector business premises by the Police Chief or his designee has been unjustifiably refused by a person who in part or whole, manages or operates the business.
  - 7. The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has more than five (5) violations of these regulations, any State or Federal, or any combination thereof within a two (2) year period, including two (2) years prior to the application date.



8. The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business has been convicted of any law of the Commonwealth of Massachusetts that is contrary to the type of secondhand business to be conducted as such, but not limited to: receiving stolen property, any form of breaking and entering, larceny's from a person, or any other form of larceny, or any form of aggravated assault as verified by a CORI by the Chief of Police or his designee.
  9. Such other grounds as the Authority determines to be in the public interest or in violation of the conditions of the license per any law or regulation of the Commonwealth or the Town of Mashpee.
- C. Transient metals dealers/buyers must obtain a Secondhand Dealer and Collectors License in compliance with §104-2 of this bylaw at least fourteen (14) days prior to any event soliciting the purchase within the Town of Mashpee of any of the items outlined in this bylaw.
1. This shall include, but not be limited to, home parties, hotel/motel venues and any other similar event.
  2. All such purchases shall be subject to the same rules as licensed Secondhand Dealers and Collectors (Junk Dealers) with the additional requirement that the itemized documentation of all purchased items shall be submitted to the Mashpee Police Department within twenty four (24) hours after the conclusion of the event.
  3. Transient metals dealers/buyers are defined as any individual, business, or company that does not have a permanent facility within the Town of Mashpee where purchase and sales records are held and available for inspection by the Mashpee Police Department with the Bylaw.

**§104-3 Inspection of Property and Records:**

- A. Whenever necessary to make an inspection to enforce the provisions of this bylaw, or when the Chief of Police, or his designee, has reasonable grounds to believe more likely than not that a specific item or Regulated Property held by a Secondhand Dealer or Secondhand Collector is associated with criminal conduct, the Chief of Police or his designee may enter the premises of the Secondhand Dealer or Secondhand Collector at any reasonable time, provided that the premises are occupied at the time of entry and the Chief of Police, or his designee, presents proper official identification at or near the time of entry. If entry is refused, the Chief of Police, or his designee, shall have recourse to every remedy provided by law to secure entry, including an administrative search warrant or a criminal search warrant.
- B. Authority to inspect Secondhand Dealer or Secondhand Collector premises under this regulation is in addition to and not in limitation of the authority the Town of the Chief of Police or any police office of any jurisdiction would otherwise have to enter the business premises.
- C. Once allowed to enter the premises of the Secondhand Dealer or Secondhand Collector, the Chief of Police, or his designee, may inspect the property kept there. The Chief of Police, or his designee, may also inspect the business records associated with Regulated Property and perform any duty imposed upon the Town or Chief of Police by this regulation.

**§104-4 Record Keeping:**

- A. The Chief of Police, or his designee, shall design a purchase report form and make copies available to all Secondhand Dealers or Secondhand Collectors. Secondhand Dealers or Secondhand Collectors shall utilize these forms, or any other substantially similar form approved by the Chief of Police, to record purchases of Regulated Property. The form may request information reasonably calculated to help the Chief of Police or his designee identify the purchaser, the seller or the property associated with the purchase of Regulated Property.
- B. Whenever a Secondhand Dealers or Secondhand Collectors purchases Regulated Property for business purposes, the Secondhand Dealers or Secondhand Collectors shall obtain acceptable identification from the seller along with the seller's current residence address. The Secondhand Dealers or Secondhand Collectors shall fill out a purchase report form in all relevant aspects at the time of purchase. A purchase report form as required to be filled out by this section shall be filled out in legible English. The seller shall sign his or her name on the filled-out form.
- C. A digital photograph will be taken of each item purchased. The photograph may be stored electronically, but are subject to the same record keeping requirements as listed in §104-4A. Copies of the photographs will be made available to the Chief of Police in a timely manner, and are subject to the same rights of inspection as listed in §104-3A.
- D. The licensee shall cause to be delivered to the Mashpee Police Department on a weekly basis, a copy of all transactions recorded in the ledger<sup>0</sup> on the form provided. If, during the preceding week such Secondhand Dealers or Secondhand Collectors has taken no articles in, he/she shall make out and deliver to the Police Department a report of such fact.

**§104-5 Posting of Licenses and Notices:**

- A. All licenses shall be conspicuously posted in an accessible place on the licensed premises, available at all times to the proper authorities.
- B. A Secondhand Dealer shall post the following notice no small than eight and one half (8 1/2") x eleven (11') inches with the lettering no smaller than one fourth (1/4") of an inch in height outside each point of entry intended for patron use and at or near each place where a Secondhand Dealer purchases used property in the regular course of business.

**§104-6 Notice:**

The sale or attempted sale of property to a Secondhand Dealer without consent of the property's owner is punishable by a civil penalty not to exceed three hundred (\$300) dollars per item

If a significant number of the patrons of the regular Secondhand Dealer use a language other than English as a primary language, the notice shall be worded in both English and the primary language or languages of the patrons.

**§104-7 Purchases by a Secondhand Dealer or Secondhand Collector:**

- A. A Secondhand Dealer or Secondhand Collector shall not make any cash purchase in an amount that exceed two hundred fifty (\$250) dollars.

- B. A Secondhand Dealer must not carry on the business of buying or selling secondhand property except at the premises designated in the dealership license except where the size of the item makes purchasing difficult.
- C. A Secondhand Dealer must not purchase any property whose serial number or other identifiable marking has been wholly or partially tampered with or removed.
- D. A Secondhand Dealer or Secondhand Collector may not purchase any item from any person under the age of eighteen (18).

**§104-8 Unauthorized Sale of Property:**

- A. No Secondhand Dealer or Secondhand Collector may purchase or sell any property of any type without the consent of the owner.
- B. No purchase will be made from anyone under the age of eighteen (18).

**§104-9 Holding Periods:**

- A. A copy of every purchase report form filled out as required by this bylaw shall be kept on the premises of the Secondhand Dealer or Secondhand Collector business during normal business hours for at least three (3) years from the date of purchase. The report form shall be subject to inspection by the Chief of Police or his designee.
- B. All Regulated Property in the categories of precious metals or precious gems, defined in §104-1 A and B purchased by a Secondhand Dealer or Secondhand Collector and required to be recorded on a purchase report form shall be held by said Secondhand Dealer or Secondhand Collector for at least thirty (30) days from the date of purchase.
- C. All other Regulated Property purchased by a Secondhand Dealer or Secondhand Collector is required to be recorded on a purchase report form and shall be held by said Secondhand Dealer or Secondhand Collector for at least twenty one (21) days from the date of purchase.
- D. The Secondhand Dealer or Secondhand Collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding period the Regulated Property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Chief of Police or his designee.
- E. The Chief of Police or his designee may give written notice to a Junk Dealer or Junk Collector holding the property that the Chief of Police or his designee has reasonable grounds to believe more likely than not a specific item or regulated property is associated with criminal conduct. The Secondhand Dealer or Secondhand Collector holding the Regulated Property shall then continue to hold the property specified in the notice in the same manner and place as required under Subsection B of this section until released by the Chief of Police or his designee.
- F. The holding period for any item of Regulated Property shall not exceed one hundred eighty (180) days from the date of purchase.
- G. A Secondhand Dealer or Secondhand Collector may from time to time request in writing that the Chief of Police shorten the length of the holding period. If the Chief of Police or his designee determines relief from the holding period is appropriate due to unreasonable hardship, the Chief of Police or his designee shall provide the Secondhand Dealer or Secondhand Collector who requested relief with written authorization to sell,

transfer or otherwise dispose of the regulated property. The request shall identify the property and state the basis or bases of the unreasonable hardship or hardships. The authorization shall be effective only upon delivery of the written authorization to the Secondhand Dealer.

H. Secondhand Dealer, retailing or wholesaling used property limited to the following, are exempt from Section B above:

1. Used clothing, furniture, footwear, and house ware items such as dishes, pots, pans, cooking utensils, and cutlery; or
2. Used clothing, furniture, footwear and house ware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a “registered charity” or by donations; or
3. Used books, papers, or magazines.

**§104-10 Violations and Penalties:**

- A. Violation of any provision of this chapter may be prosecuted as a criminal matter or as an administrative procedure or by the method provided in MGL C. 40, §21D. Each violation shall be considered separately.
- B. Whoever violates the provisions of this chapter shall be fined not more than three hundred (\$300) dollars. The Licensing Authority may suspend, revoke or modify any license issued by them whenever they have reasonable cause to believe the license has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in MGL C. 40, §21D shall be subject to a fine of two hundred fifty (\$250) dollars.

**§104-11 Severability:**

Each provision of this chapter shall be construed as separate. If any part shall be held invalid for any reason, the remainder shall continue in full force and effect.

**CHAPTER 106 – HEALTH AND SANITATION**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.1, of the 1980 Code.**  
**Amendments noted where applicable.**

**GENERAL REFERENCES**

**Board of Health - See Ch. 5, Art. II**

**Dogs and other animals - See Ch. 79**

**§106-1 Littering of Streets:**

No person shall throw or sweep into or place or drop or suffer to remain in any street any hoops, boards or other wood with nails projecting therefrom, or nails of any kind, shavings, ashes, hair, manure, rubbish, offal or filth of any kind or any noxious or refuse liquid or solid substance.

**§106-2 Runoff into Streets:**

No person shall allow any sinkwater or other impure liquid to run from the house, barn or lot occupied by him/her into any street of the Town.

**§106-3 Junk Collectors:**

No person shall barter or trade and collect junk without a license from the Selectmen of the Town.

**§106-4 Use of Town Dump; Penalties:**

- A. The Mashpee Town Dump shall be restricted to use by residents only. All residents must dump in designated locations. All commercial garbage and trucking outfits must be approved by the Board of Health. No autos or parts of autos will be accepted.
- B. All persons who willfully fail or refuse to comply with these rules and regulations shall be punished by a fine of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50).

**§106-5 Individual Sewage Disposal System Review:**

Prior to the issuance of a disposal works construction permit by the Board of Health for the installation of a sewage disposal system, an independent registered civil or sanitary engineer may be retained by the Board of Health to conduct a review of the planned sewage disposal system and related hydrologic data regarding the impact of the proposed discharge on ground and surface waters. To offset the cost of this review to the Town, the applicant will be assessed a fee to be paid to the Board of Health at the time of the application in accordance with the following schedule: fifteen cents (\$0.15) per gallon per day for the first twenty thousand (20,000) gallons of flow; ten cents (\$0.10) per gallon per day for the next twenty thousand (20,000) gallons of flow; and five cents (\$0.05) per gallon per day for all in excess of forty thousand (40,000) gallons. The fee will be based upon the cumulative flow total for the entire project with the total of the proposed systems considered in their entirety and will not be based upon any project phasing by the applicant.

History: Added 2-1-88 STM, approved by Attorney General 3-16-1988.

**§106-6 Unlawful Dumping; Penalties:**

History: Added 11-13-1989 STM, Article 35, approved by Attorney General 2-16-1990

- A. No person shall dump, throw, place, deposit, discharge, abandon, bury or otherwise dispose of any refuse, meaning all solid or liquid waste materials, including scrap, debris, garbage, rubbish or sludge, nor shall any person knowingly allow the same to take place upon public or private property unless said property lawfully exists as an approved sanitary landfill site or said dumping is otherwise lawfully permitted.
- B. Any person violating the provisions of this section shall be punished by a fine of three hundred dollars (\$300). Any such violation shall constitute a separate offense on each successive occurrence.
- C. Any person notified to remove refuse unlawfully placed upon public or private property who refuses to do so after receipt of notice to remove the same, in addition to the penalties above provided, shall pay a penalty of three hundred dollars (\$300) per day for each day that refuse is permitted and allowed to remain on the property after said notice is given, each of said days constituting a separate offense of this section.
- D. The provisions of MGL C. 40, §21D, providing for the noncriminal disposition of bylaw violation shall be applicable, and the person taking cognizance of any violation shall have available as an alternative to initiating criminal proceedings the procedure set forth in MGL C. 40, §21D, as aforesaid. In addition to Police Officers, members of the Board of

Health, agents of the Board of Health, the Director of Public Works and the Conservation Officer are empowered to enforce the provisions of this section.

**§106-7 Unlawful Dumping – Discharge/Groundwater; Penalties:**

**History: Added May 6, 1996 ATM, Article 31, approved by Attorney General 9-26-1996**

- A. No person or organization shall dump, discharge, inject or allow to be discharged, buried, or injected into the groundwater located within or below the Town of Mashpee any known carcinogens (as defined by the United States Environmental Protection Agency or the Massachusetts Department of Environmental Protection) at levels at or above zero (0) parts per billion nor shall any person knowingly allow the same to occur.
- B. Any person or organization violating the provisions of this section shall be punishable by a fine of three hundred dollars (\$300) per day of infraction. Any such violation shall constitute a separate offense on each successive occurrence.

**CHAPTER 107-NITROGEN CONTROL BYLAW**

**History: Added 10-20-2014 ATM, Article 13, approved by Attorney General 2-23-2015**

**§107-1 Purpose**

A Town bylaw to conserve valuable waterways and other resources that increase our property values, that protect our unique environment vital to our economy, and that reduce the financial burden on taxpayers and property owners by regulating the outdoor application of nitrogen on turf. The regulation of nitrogen applications will reduce the overall amount of excess nitrogen entering the Town's Resource Areas as defined in the Mashpee Wetlands Protection Bylaw (Chapter 172; Section 2) and Regulations. Reducing excess nitrogen helps protect and improve the water quality of Mashpee's two (2) valuable estuaries-Waquoit Bay and Popponesset Bay-and their associated bays, coves and waterways; as well as Mashpee's many ponds and streams.

This Town Bylaw is also critical to reducing Mashpee's Total Maximum Daily Load (TMDL) of nitrogen. Mashpee is presently in violation of the Clean Water Act because of excess nitrogen entering the Town's estuaries. The Cape Cod Commission has estimated that reducing nitrogen from outdoor lawn applications to coastal estuaries and embayment by fifty (50%) percent could save the taxpayers of Mashpee \$40 million dollars in sewerage and other wastewater treatment expenses. Scientifically we know this can be done without affecting the quality of turf in Mashpee.

**§107-2 Applicability**

This Bylaw shall apply to and regulate any and all applications of nitrogen through fertilizer on managed turf areas within the Town of Mashpee.

**§107-3 Definitions**

**Agriculture** - includes, farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shellfishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

**Best Management Practices** - (BMP), means a sequence of activities designed to limit a nonpoint pollution source. For the purposes of this Bylaw, BMP means the most current edition of "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program.

**Certified Fertilizer Applicator** - means a person certified by the Cape Cod Commission, Cape Cod Cooperative Extension, or Town of Mashpee departments, or any combination thereof, to apply fertilizer and manage turf in conformance with the BMP.

**Compost or Organic Compost** - means the biologically stable, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

**Fertilizer** - means a substance that enriches the soil with the elements essential for plant growth, such as nitrogen, phosphorus potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing; compost tea and liquid seaweed, as defined and applied in accordance with standards in Section 5(F), is also excluded from definition of fertilizer.

**Heavy rain** - is a rainfall greater than 0.25 inches per hour during a twenty four (24) hour period, or a rainfall of one (1") inch total in the next twenty four (24) hour period.

**Impervious surface** - means any structure, surface, or improvement that reduces or prevents absorption of storm water into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

**MDAR Fertilizer Regulations** - means the most recent regulations of the "Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes", developed by the Massachusetts Department of Agricultural Resources (MDAR) pursuant to its authority under G.L. c128, Section 2(k) and Section 65(A), as amended by St. 2012, c 262.330 CMR 31.00. The application of phosphorus in fertilizer if regulated, for the purposes of this bylaw, by the MDAR Fertilizer Regulations.

**Naturally Vegetated Buffer Zone** - means areas of indigenous vegetation. Plantings may be considered as naturally vegetated if they meet the standards of the Mashpee Conservation Commission and include a low-growing herbaceous layer of vegetation, which includes grassland, heathland or meadow plantings.

**Nitrogen** - means an element essential to plant growth. For the purposes of the bylaw, nitrogen may be available as slow-release, controlled-release, time-release, slowly available, or water insoluble nitrogen, which means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants; and/or quick-release, water-soluble nitrogen which means nitrogen in a form that does not delay its availability for turf and other plant uptake and is rapidly available for turf and other plant uptake, and use after application.

**Saturated ground** - means soil soaked with moisture so that it cannot absorb any more liquid.

**Turf, Lawn or Sod** - means any non-crop land area that is covered by any grass species, excluding meadow, grasslands, flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on turf farms or any form of agricultural production or use.

#### **§107-4 Performance Standards**

All application or nitrogen to turf shall comply with the following standards:

- A. The application of nitrogen is prohibited between October 30<sup>th</sup> and April 14<sup>th</sup> unless specifically permitted by the Town Board of Health, The Town Conservation Commission or the Board of Selectmen, as set out below. Based on early spring or fall

weather conditions, soil temperature and degree of turf emergence from dormancy, or other relevant condition, and using the guidelines of the BMP, the Town Board of Health, the Town Conservation Commission, or the Board of Selectmen may permit earlier or later application of nitrogen, in which case such extended period shall be announced by notice or publication. A working group may be established by the Board of Selectmen to assist in undertaking the duties referenced in this paragraph.

- B. No person shall cause nitrogen from any fertilizer application to apply to, or otherwise be deposited on any impervious surface including parking lot, driveway, roadway, sidewalk, frozen soil or ice. Any fertilizer applied, spilled and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.
- C. No person shall apply nitrogen twenty four (24) hours before or during a heavy rain event or apply nitrogen to saturated ground. An application of nitrogen should be watered in with no more than one-quarter (0.25") inch of irrigation or natural rain within the next twenty four (24) hour period.
- D. The application of nitrogen is prohibited within one hundred (100') feet of the following Resource Areas, as defined in The Mashpee Wetlands Protection Bylaw, Section 2 and Regulations: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal ponds; lakes; ponds; rivers, streams; creeks; and estuaries. Notwithstanding the above, where there is a fifty (50') foot naturally vegetated buffer zone to an freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; ponds; lakes; and estuaries, an application of nitrogen is prohibited within fifty (50') feet of that protected Resource Area. An application of nitrogen is prohibited within one hundred (100') feet of any rivers; streams; and creeks, as defined in the Rivers Protection Act, Chapter 258 of the Acts of 1996. There are alternative methods of enhancing turf within these prohibited areas without application of nitrogen; see Sections 5(E) and Sections 5(F). A Certified Fertilizer Applicator may apply to the Town Conservation Commission for approval to authorize limited applications of nitrogen on turf within these prohibited areas. A working group may be established by the Town Conservation Commission to assist in undertaking the duties referenced in this paragraph.

#### **§107-5 Exemptions**

The following activities shall be exempt from Section 4:

- A. Application of nitrogen for agriculture and horticulture uses; these applications are regulated by the MDAR Fertilizer Regulations.
- B. Application of fertilizer to golf courses, except that any application of nitrogen on greens or fairways within Resource Areas referenced in Section 4(D) shall comply with the Recommendations set forth in Section 6, and shall use eighty five (85%) percent or higher slow-release, water-soluble nitrogen, in organic or inorganic form applied with drop spreaders or spreaders with side guards to prevent application onto Resource Areas and other non-turf areas. Golf courses with liners installed adjacent to ponds and other Resource Areas to prevent leaching of nitrogen are exempt from Section 4(D) in those areas where such lines are installed.
- C. Application of nitrogen to gardens, including vegetable and flower, trees, shrubs and indoor applications including greenhouses; these applications are regulated by the MDAR Fertilizer Regulations.



- D. Application of nitrogen for the establishment of new vegetation in the first growing season, or repairing of turf in the first growing season, after substantial damage, with the restrictions described in Section 5(B) for applications in the buffer zone of regulated Resource Areas referenced in Section 4(D).
- E. Application of compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.
- F. Compost tea and liquid seaweed applications, including formulas with less than five (5%) percent total nitrogen, if only and if applied in a manner that follows label recommendations and/or standard industry recommendations for a foliar application to the point of leaf runoff. No root drenching of compost tea or liquid seaweed with nitrogen is permitted within the buffer zone of regulated Resource Areas referenced in Section 4(D).

#### **§107-6 Recommendations**

The Town of Mashpee strongly recommends that nitrogen should be applied to turf and other plants at the lowest rate necessary, as is described in the BMP. Any single application of nitrogen should not exceed 0.5 pounds of nitrogen per one thousand (1,000') square feet, and the annual aggregate total application of nitrogen should not exceed one (1.0) pound per one thousand (1,000') square feet. The application of any nitrogen should be of a natural-organic, slow release, water-soluble form.

#### **§107-7 Enforcement Authority**

The enforcement authority for Performance Standards 4(A-C) shall be the Agents of the Board of Health or his or her designees. Enforcement of the provisions in Section 4(D) shall be the Agents of the Conservation Commission or his or her designees.

The fine for the first (1<sup>st</sup>) offense shall be no greater than one hundred fifty (\$150) dollars. A warning in lieu of a fine or other enforcement action for the first (1<sup>st</sup>) offence can be issued at the discretion of the enforcement authority. The fine for a second (2<sup>nd</sup>) offence shall be two hundred fifty (\$250) dollars. The fine for each subsequent offense shall be three hundred (\$300) dollars.

#### **§107-8 Severability Clause**

Should any Section, part or provision of this bylaw be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of the bylaw as a whole or any part thereof, other than the Section, part or provision held invalid or unconstitutional.

## **CHAPTER 110-HISTORIC DISTRICTS**

**History: Added October 15, 2007 ATM, Article 21, approved by Attorney General 1-28-2008**

#### **§110-1 Establishment and Purpose:**

The Town of Mashpee hereby establishes a Local Historic District, to be administered by a Historic District Commission as provided for under MGL C. 40C, as amended. The purpose of the District is to aid in the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the Town of Mashpee, the maintenance and improvement of their settings and the encouragement of new building designs compatible with the existing architecture.

## **§110-2 Definitions:**

The terms defined in this section shall be capitalized throughout this Chapter. Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. As used in this bylaw the following terms shall have the following meaning:

**ALTERATION, TO ALTER** - The act or the fact of rebuilding, reconstruction, restoration, replication, removal, demolition, and other similar activities.

**BUILDING** - A combination of materials forming a shelter for persons, animals or property.

**CERTIFICATE** - A Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this bylaw.

**COMMISSION** - The Historic District Commission as established in this bylaw.

**CONSTRUCTION, TO CONSTRUCT** - The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

**DEMOLITION** - Removal of any existing structure or portion thereof.

**DISPLAY AREA** - The total surface area of a SIGN, including all lettering, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the SIGN. The DISPLAY AREA of an individual letter SIGN or irregular shaped SIGN shall be the area of the smallest rectangle into which the letters or shape will fit. Where SIGN faces are placed back to back and face in opposite directions, the DISPLAY AREA shall be defined as the area of one face of the SIGN.

**DISTRICT** - The Local Historic District as established in this bylaw consisting of one (1) or more DISTRICT areas.

**EXTERIOR ARCHITECTURAL FEATURE** - Such portion of the exterior of a BUILDING or STRUCTURE as is open to view from a public way or ways, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

**PERSON AGGRIEVED** - The applicant; an owner of adjoining property; an owner of property within the same DISTRICT area; an owner of property within one-hundred (100') feet of said DISTRICT area; and any charitable corporation in which one of its purposes is the preservation of historic places, structures, BUILDINGS or districts.

**SIGNS** - Any symbol, design or device used to identify or advertise any place of business, product, activity or person.

**STRUCTURE** - A combination of materials other than a BUILDING, including but not limited to a SIGN, fence, wall, terrace, walk or driveway.

**TEMPORARY STRUCTURE, BUILDING or SIGN** - A BUILDING or STRUCTURE (other than a SIGN) not intended to be in existence for a period of more than one (1) year, or a SIGN not intended to be in place for a period of more than thirty (30) days. The COMMISSION may further limit the time periods set forth herein as it deems appropriate.

**§110-3 District Boundaries:**

The DISTRICT shall consist of one or more DISTRICT areas as follows:

- A. **MASHPEE HISTORIC DISTRICT** - The Mashpee Historic District shall be a DISTRICT area under this Chapter. The location and boundaries of the Mashpee Historic District are defined and shown on the Local Historic District Map of the Town of Mashpee, Sheet 1 which is a part of this Chapter and is on file in the office of the Town Clerk. Sheet 1 is based on the 2006 Mashpee Assessors' Map. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as otherwise apparent on Sheet 1.

**§110-4 Design Guidelines:**

The COMMISSION, after a public hearing duly posted and advertised at least fourteen (14) days in advance in a conspicuous place in Town Hall and in a newspaper of general circulation, may adopt and from time to time amend guidelines which set forth the designs for certain EXTERIOR ARCHITECTURAL FEATURES which are, in general, suitable for the issuance of a CERTIFICATE within each Historic District area. No such design guidelines shall limit the right of an applicant for a CERTIFICATE to present other designs to the COMMISSION for approval.

**§110-5 Alterations and Construction Prohibited without a Certificate:**

- A. Except as this Chapter provides, no BUILDING or STRUCTURE or part thereof within a DISTRICT shall be CONSTRUCTED or ALTERED or DEMOLISHED in any way that affects the EXTERIOR ARCHITECTURAL FEATURES as visible from a public way, unless the COMMISSION shall first have issued a CERTIFICATE with respect to such CONSTRUCTION or ALTERATION.
- B. No Building Permit for CONSTRUCTION of a BUILDING or STRUCTURE or for ALTERATION of an EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT and no demolition permit for demolition or removal of a BUILDING or STRUCTURE within a DISTRICT shall be issued by the Town or any department thereof until a CERTIFICATE as required under this Chapter has been issued by the COMMISSION.

**§110-6 Procedures for Review of Applications:**

- A. Any person who desires to obtain a CERTIFICATE from the COMMISSION shall file with the COMMISSION, in care of the office of the Town Clerk, an application for a CERTIFICATE of Appropriateness, of Non-Applicability or of Hardship, as the case may be. The application shall be accompanied by such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the COMMISSION to enable it to make a determination on the application. The Town Clerk shall certify the date of receipt of said application and shall forthwith transmit said application to the Chairman of the COMMISSION or another person designated by the COMMISSION.
- B. The COMMISSION or its designee shall determine within fourteen (14) days of the filing of an application for a CERTIFICATE whether said application involves any EXTERIOR ARCHITECTURAL FEATURES which are within the jurisdiction of the COMMISSION.

- C. If the COMMISSION or its designee determines that an application for a CERTIFICATE does not involve any EXTERIOR ARCHITECTURAL FEATURES, or involves an EXTERIOR ARCHITECTURAL FEATURE which is not subject to review by the COMMISSION under the provisions of this Chapter, the COMMISSION shall forthwith issue a CERTIFICATE of Non-Applicability.
- D. If the COMMISSION or its designee determines that such application involves any EXTERIOR ARCHITECTURAL FEATURE subject to review under this Chapter, the COMMISSION shall hold a public hearing on the application, except as may otherwise be provided in this Chapter, within forty five (45) days from the date of the filing of the application. At least fourteen (14) days before said public hearing, public notice shall be given by posting in a conspicuous place in Town Hall. Such notice shall identify the time, place and purpose of the public hearing. Concurrently, a copy of said public notice shall be mailed, postage prepaid, to: the applicant; to the owners of all adjoining properties and of other properties deemed by the COMMISSION to be materially affected thereby, all as they appear on the most recent applicable tax list; to the Planning Board; to any person filing a written request for notice of hearings, such request to be renewed yearly in December; and to such other persons as the COMMISSION shall deem entitled to notice.
- E. A public hearing on an application for a CERTIFICATE need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application for a CERTIFICATE may be waived by the COMMISSION if the COMMISSION determines that the EXTERIOR ARCHITECTURAL FEATURE involved, or its category, is so insubstantial in its effect on the DISTRICT that it may be reviewed by the COMMISSION without a public hearing. If the COMMISSION dispenses with a public hearing on an application for a CERTIFICATE, notice of such application shall be given to the owners of all adjoining property and of other property deemed by the COMMISSION to be materially affected thereby as above provided, and ten (10) days shall elapse after the mailing of such notice before the COMMISSION may act upon such application.
- F. Within sixty (60) days after the filing of an application for a CERTIFICATE, or within such further time as the applicant may allow in writing, the COMMISSION shall issue a CERTIFICATE or a disapproval. In the case of a disapproval of an application for a CERTIFICATE, the COMMISSION shall set forth in its disapproval the reasons for such disapproval. The COMMISSION may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material and similar features that, if made and filed with the COMMISSION in a subsequent application, would make the application acceptable to the COMMISSION.
- G. The concurring vote of a majority of the members of the COMMISSION, including any Alternate Members designated to hear the application, shall be required to issue a CERTIFICATE.
- H. In issuing CERTIFICATES, the COMMISSION may, as it deems appropriate, impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose of this Chapter.
- I. If the COMMISSION determines that the CONSTRUCTION or ALTERATION or DEMOLITION for which an application for a CERTIFICATE of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the DISTRICT, the COMMISSION shall issue a CERTIFICATE of Appropriateness.

- J. If the CONSTRUCTION or ALTERATION or DEMOLITION for which an application for a CERTIFICATE of Appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a CERTIFICATE of Hardship, the COMMISSION shall determine whether, owing to conditions especially affecting the BUILDING or STRUCTURE involved, but not affecting the DISTRICT generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this Chapter. If the COMMISSION determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the COMMISSION shall issue a CERTIFICATE of Hardship.
- K. The COMMISSION shall send a copy of its CERTIFICATES and disapprovals to the applicant and shall file a copy of its CERTIFICATES and disapprovals with the office of the Town Clerk and the Building Inspector. The date of issuance of a CERTIFICATE or disapproval shall be the date of the filing of a copy of such CERTIFICATE or disapproval with the office of the Town Clerk.
- L. If the COMMISSION should fail to issue a CERTIFICATE or a disapproval within sixty (60) days of the filing of the application for a CERTIFICATE, or within such further time as the applicant may allow in writing, the COMMISSION shall thereupon issue a CERTIFICATE of Hardship Due to Failure to Act.
- M. Each CERTIFICATE issued by the COMMISSION shall be dated and signed by its chairperson or such other person designated by the COMMISSION to sign such CERTIFICATES on its behalf.
- N. A PERSON AGGRIEVED by a determination of the COMMISSION may, within twenty days of the issuance of a CERTIFICATE or disapproval, file a written request with the COMMISSION for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the regional planning agency. The finding of the person or persons making such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the COMMISSION, unless a further appeal is sought in the Superior Court as provided in Chapter 40C, §12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the arbitrator has been filed with the office of the Town Clerk.

**§110-7 Criteria for Determinations:**

- A. In deliberating on applications for CERTIFICATES, the COMMISSION shall consider, among other things, the historic and architectural value and significance of the site, BUILDING or STRUCTURE; the general design, proportions, detailing, mass, arrangement, texture, and material of the EXTERIOR ARCHITECTURAL FEATURES involved; and the relation of such EXTERIOR ARCHITECTURAL FEATURES to similar features of BUILDINGS and STRUCTURES in the surrounding area.
- B. In the case of new CONSTRUCTION or additions to existing BUILDINGS or STRUCTURES, the COMMISSION shall consider the appropriateness of the scale, shape and proportions of the BUILDING or STRUCTURE both in relation to the land area upon which the BUILDING or STRUCTURE is situated and in relation to BUILDINGS and STRUCTURES in the vicinity. The COMMISSION may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable statute or bylaw.

- C. When ruling on applications for CERTIFICATES on solar energy systems as defined in MGL C. 40A, §1A the COMMISSION shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.
- D. The COMMISSION shall not consider interior arrangements or architectural features not subject to public view from a public way.

**§110-8 Exclusions:**

- A. The COMMISSION shall exclude from its review the following:
  - 1. Temporary BUILDINGS, STRUCTURES or SIGNS subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the COMMISSION may reasonably specify in a CERTIFICATE of Non-Applicability.
  - 2. Terraces, walks, driveways, sidewalks and similar STRUCTURES, provided that any such STRUCTURE is substantially at grade level.
  - 3. Storm windows and doors, screen windows and doors, and window air conditioners.
  - 4. The color of paint on residential buildings and structures.
  - 5. The color of materials used on roofs of residential buildings and structures.
  - 6. SIGNS of not more than four (4') square feet in DISPLAY AREA, either freestanding or attached to a building, indicating the street number or name of the occupant of the premises, or both, which may also include identification in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and, if illuminated, is illuminated only indirectly.
  - 7. One (1) real estate, "for sale" or "for rent" SIGN, not more than five (5') square feet in DISPLAY AREA, and advertising only the premises on which the sign is located, provided that such SIGN is removed forthwith upon the signing of a legally binding purchase and sales, rental or lease agreement.
  - 8. One building contractor's SIGN while a building on the premises is actually under CONSTRUCTION or ALTERATION, not exceeding five (5') square feet in DISPLAY AREA, provided that such sign is removed forthwith upon completion of said CONSTRUCTION or ALTERATION.
  - 9. The reconstruction, substantially similar in exterior design, of a BUILDING, STRUCTURE or EXTERIOR ARCHITECTURAL FEATURE damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.
- B. Upon request, the COMMISSION shall issue a CERTIFICATE of Non-Applicability with respect to CONSTRUCTION or ALTERATION in any category not subject to review by the COMMISSION in accordance with the above provisions.
- C. Nothing in this bylaw shall be construed to prevent the ordinary maintenance, repair or replacement of any EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT

which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any CONSTRUCTION or ALTERATION under a permit duly issued prior to the effective date of this bylaw.

**§110-9 Categorical Approval:**

The COMMISSION may determine from time to time after a public hearing, duly advertised and posted at least fourteen (14) days in advance in a conspicuous place in Town Hall and in a newspaper of general circulation in Mashpee that certain categories of EXTERIOR ARCHITECTURAL FEATURES, STRUCTURES or BUILDINGS under certain conditions may be CONSTRUCTED or ALTERED without review by the COMMISSION without causing substantial derogation from the intent and purpose of this Chapter.

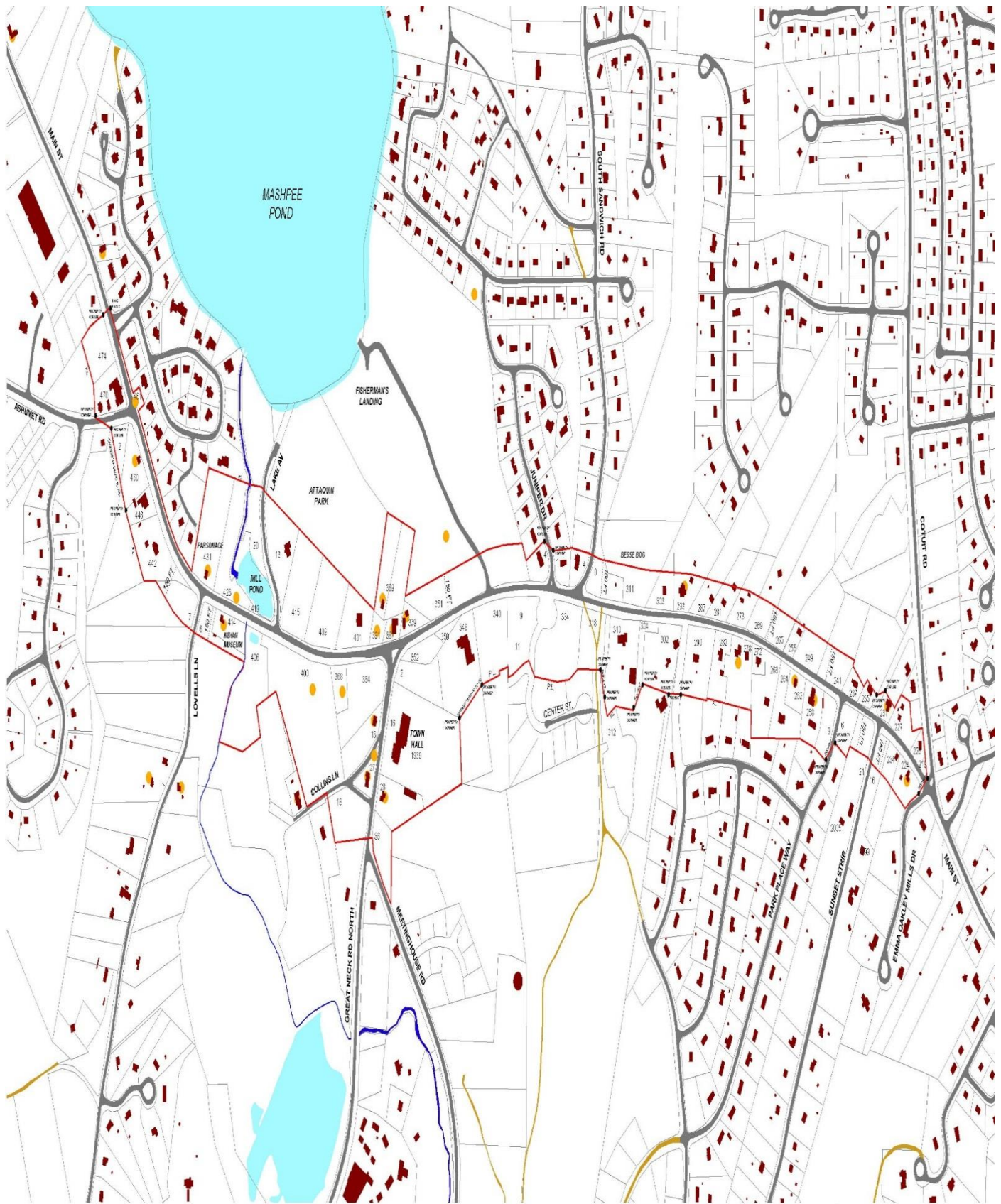
**§110-10 Enforcement and Penalties:**

- A. The COMMISSION shall determine whether a particular activity is in violation of this Chapter or not, and the COMMISSION shall be charged with the enforcement of this Chapter.
- B. The COMMISSION, upon a written complaint of any resident of Mashpee or owner of property within Mashpee or upon its own initiative, shall institute any appropriate action or proceedings in the name of the Town of Mashpee to prevent, correct, restrain or abate violation of this Chapter. In the case where the COMMISSION is requested in writing to enforce this Chapter against any person allegedly in violation of same and the COMMISSION declines to act, the COMMISSION shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within twenty one (21) days of receipt of such request.
- C. Whoever violates any of the provisions of this Chapter shall be punishable by a fine of up to three hundred (\$300) dollars for each offense. Each day during any portion of which such violation continues to exist shall constitute a separate offense.
- D. The COMMISSION may designate the Building Inspector of the Town of Mashpee, or another Town Official, to act on its behalf and to enforce this Chapter under the direction of the COMMISSION.

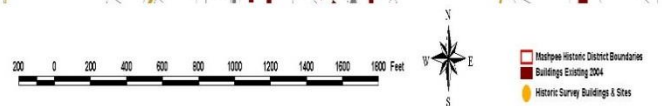
**§110-11 Validity and Separability:**

The provisions of this Chapter shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Chapter shall continue to be in full force and effect.





Local Historic District Map of the Town of Mashpee - Sheet 1





## **CHAPTER 112 – LICENSES AND PERMITS**

**History: Adopted by the Town of Mashpee: Article I, 5-2-1988 STM, approved by Attorney General 8-17-1988.**  
**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Dog Licenses - See Ch. 79, Art. II.**

#### **§112-1 Authority to Deny or Revoke; Cause:**

Any board, officer, committee or department may deny any application for or revoke or suspend any local license or permit, including renewals and transfers, for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees assessments, betterments or any other municipal charges, or with respect to any activity, event or other matter which is subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about any real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges.

**History: Amended 10-6-1997, ATM, Article 24, approved by Attorney General 3-9-1998.**

#### **§112-2 List of Delinquent Taxpayers to be Furnished:**

The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the "Tax Collector", shall annually furnish to each department, board, committee or officer, hereinafter referred to as the "licensing authority," that issues licenses or permits, including renewals and transfers, a list of any person, corporation or business enterprise, hereinafter referred to as the "party," that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve (12) month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

#### **§112-3 Required Notice and Hearing; Certificate of Good Standing:**

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any part whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the party and Tax Collector, as required by the applicable provisions of law, and said party is given a hearing, to be held not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced to any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this Chapter shall not be reissued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the municipality as of the date of issuance of said certificate.

**History: Amended 10-6-1997, ATM, Article 24, approved by Attorney General 3-9-1998.**

**§112-4 Payment:**

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit, and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

**§112-5 Waiver of Denial or Revocation:**

The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his/her immediate family, as defined in MGL C. 268, §1, in the business or activity conducted in or so on said property.

**§112-6 Exceptions:**

A. This Chapter shall not apply to the following licenses and permits:

Permit	Statutory Reference
Open burning	MGL C. 48, §13
Bicycle permits	MGL C. 85, §11A
Sales of articles for charitable purposes	MGL C. 101, §33
Children's work permits	MGL C. 149, §69
Clubs, associations dispensing food or beverage licenses	MGL C. 140, §21E
Dog licenses	MGL C. 140, §137
Fishing, hunting, trapping licenses	MGL C. 131, §12
Marriage licenses	MGL C. 207, §28
Theatrical events, public exhibition permits	MGL C. 140, §181

B. All references in this Chapter are to Massachusetts General Laws.

## **CHAPTER 120 – NOISE**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.5, Sec. 4.5.1, or the 1980 Code.**  
**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Alarm systems - See Ch. 47**

**Disorderly conduct - See Ch. 76**

**Dogs and other animals - See Ch. 79**

**Zoning - See Ch. 174**

**§120-1 Excessive or Unusual Noises:**

**History: Amended 5-2-1988 ATM, approved by Attorney General 8-17-1988.**

A. It shall be unlawful for any person or persons occupying or having charge of any building, dwelling, shelter, boat, conveyance or premises or any part thereof in the Town, other than that section of any establishment licensed under MGL C.138, to cause or suffer or allow between the hours of 10:00 p.m. to 8:00 a.m. any unnecessary loud, excessive or unusual noises in the operation of any radio, phonograph or other mechanical sound-making device or instrument or reproducing device or instrument, or in the play of any band, orchestra, musician or group of musicians, or in the use of any device to amplify

the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises, or the loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of one hundred fifty (150') feet or more from the building, structure, vehicle or premises in which or from which it is produced. Any person violating this subsection shall be punished by a fine of fifty dollars (\$50) for each offense.

- B. Any person who is present in any building, dwelling, shelter, boat, conveyance or premises or any part thereof at any time when a violation of Subsection A occurs shall be deemed to have made, aided, caused, suffered countenanced or otherwise assisted in the making of said improper noises and shall be punished by a fine of fifty dollars (\$50) for each offense.

#### **§120-2 Excessive Noise by Dogs:**

History: Added 5-5-2003 ATM, Article 29, approved by Attorney General 8-27-2003.

History: Amended 10-18-2004 ATM, Article 30, approved by Attorney General 1-27-2005.

History: Amended 10-20-2008 ATM, Article 19, approved by Attorney General 2-11-2009.

- A. Any person who is the owner, keeper, or individual having responsibility for a dog shall insure that such a dog is not a nuisance by reason of excessive howling or barking for a duration longer than fifteen (15) minutes any time during the day or night.
- B. For the purpose of this bylaw nuisance shall be defined as “a source of annoyance to sick or convalescing persons residing in the vicinity and disturbing a person or persons reasonable right to peace or privacy by making loud or continuous noise by barking or howling, which is plainly audible off of the premises.
- C. Whoever violates the provisions of this bylaw upon a first (1<sup>st</sup>) offense in a calendar year shall be issued a verbal warning, upon any subsequent violation within said calendar year will be assessed a fine of fifty (\$50) dollars.
- D. After the recording of the third (3<sup>rd</sup>) offense, the Animal Control Officer may request the Chief of Police to hold a hearing pursuant to the provisions of M.G.L. C. 140 §157, and to make disposition of the dog in accordance with the provisions of said law.  
History: Added 5-4-2009 ATM, Article 13, approved by Attorney General 5-21-2009.

### **CHAPTER 123 – PARADES, CARNIVALS, FAIRS AND FESTIVALS**

History: Adopted by the Town of Mashpee 12-2-1985 STM, Article 56, approved by Attorney General 2-11-1986.

Amendments noted where applicable.

#### **§123-1 Permit Required; Procedure:**

- A. No person or organization shall maintain a parade, carnival, fair or festival in the Town of Mashpee without first having obtained a permit from the Board of Selectmen.
- B. The Board of Selectmen shall, in each instance of application for such a permit, conduct a public hearing. Notice of said hearing shall be given by publication of the time and place thereof in a local newspaper not less than seven (7) days before the hearing, and the expense of such publication shall be borne by the applicant. After such a hearing, the Board of Selectmen shall render a decision, in writing, stating the decision and the reason therefor and shall file the decision with the Town Clerk and send a copy thereof to the applicant. In considering the application for a permit, the Board of Selectmen shall take into account the general safety and well-being of the inhabitants of the Town, the rights of abutting property owners and the benefit to be conferred upon the general public by the granting of the permit.

- C. Upon the filing of the application with the Board of Selectmen, the applicant shall also give notice to the Chief of Police, the Chief of the Fire Department, the Board of Health and the Building Inspector, and the applicant shall submit proof to the Board of Selectmen at the hearing that notice has been duly given.

**§123-2 Imposition of Conditions:**

The Board of Selectmen may impose such conditions as it deems appropriate for the protection of public safety and property.

**§123-3 Revocation of Permit:**

Any permit granted hereunder may be revoked by the Board of Selectmen for violation of any term or condition imposed by the permit.

**CHAPTER 125 – PEACE AND GOOD ORDER**

History: Adopted by the Town of Mashpee: Art. I, as Ch. 4, Art. 4.5, Sec. 4.5.6 of the 1980 Code.  
Amendments noted where applicable.

**General References**

Alarm systems - See Ch. 47

Alcoholic beverages - See Ch. 49

Disorderly conduct - See Ch. 76

Dogs and other animals - See Ch. 79

Noise - See Ch. 120

Parades, carnivals, fairs and festivals - See Ch. 123

**ARTICLE I – Sleeping in Public**

**§125-1 Prohibited Activity:**

No person shall sleep in a motor vehicle parked upon any public way or public parking area or sleep in the open on any beach within the limits of the Town of Mashpee between the hours of 9:00 p.m. and 6:00 a.m.

**§125-2 Violations and Penalties:**

Any person violating this Chapter shall be punished by a fine or not more than fifty dollars (\$50) for each offense.

**CHAPTER 133 – RACES, FOOT**

History: Adopted by the Town of Mashpee, 5-6-1985 ATM, Article 10, approved by Attorney General 9-23-1985.  
Amendments noted where applicable.

**§133-1 Races to be Sponsored:**

Competitive foot races may be held on public ways, provided that such races are sponsored by or in cooperation with organized athletic, recreational or charitable organizations, and further provided that the sponsoring organization shall first obtain a permit from the Board of Selectmen to conduct the foot race. There shall be a fee of twenty-five dollars (\$25) for said permit.

**§133-2 Permit Applications:**

The sponsoring organization shall apply to the Board of Selectmen, in writing, for the permit and shall include in the application the routes to be followed, the travel lanes to be occupied by runners, locations of checkpoints and refreshment stops and the arrangements made for police traffic control officers and/or rescue units as required by the Police Chief and Fire Chief respectively.

**§133-3 Authority of Selectmen:**

The Board of Selectmen is authorized and empowered to make and adopt such regulations as it may deem reasonable and appropriate to secure the safety of the participants in the race, motorists using the public ways and the inhabitants of the Town.

**§133-4 Exceptions:**

The provisions of this chapter shall not be applicable to any foot race sponsored by the School Committee or the Parks and Recreation Department.

**§133-5 Violations and Penalties:**

Any violation of the provisions of this chapter shall be punished by a fine of not more than one hundred dollars (\$100).

## **CHAPTER 145 – SHELLFISH**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.9, of the 1980 Code.**  
**Amendments noted where applicable.**

**§145-1 Promulgation of Shellfishing and Eeling Regulations; Violations and Penalties:**

The Board of Selectmen are authorized, from time to time, to make regulations governing the taking of shellfish and eels from the foreshores, flats and tidal waters of the Town of Mashpee. No such regulations shall become effective until a public hearing has been held by the Board of Selectmen and a public notice of the regulations adopted shall have been given. The Selectmen shall be governed by all applicable General Laws in carrying out the authority vested in them by this chapter. Any violation of a regulation duly adopted by the Board of Selectmen shall be punished by a fine not to exceed three hundred dollars (\$300) in accordance with a schedule of fines set forth in the regulations.

**History: Amended 12-3-1984 STM, Article 50.**

**History: Amended 10-7-1991 ATM, Article 36, approved by Attorney General 1-7-1992.**

**§145-2 Appointment of Herring Wardens:**

The Town Manager is authorized to appoint one (1) or more Herring Wardens and is authorized, from time to time, to make regulations concerning the opening and maintenance of ditches, sluiceways or canals into any pond within the Town not in private possession for the introduction and propagation in such pond or in any part thereof of herring, alewives or other swimming marine food fish and for the creation of fisheries for the same. No such regulations shall become effective until a public hearing has been held by the Board of Selectmen and public notice of the regulations adopted shall have been given.

**History: See Charter, Section 4-2(B).**

**History: Amended 12-2-1985 STM, Article 52, approved by Attorney General 2-11-1986.**

**History: Amended 10-17-2005 STM, Article 1, approved by Attorney General 3-16-2006.**

**§145-3 (Reserved)**

## **CHAPTER 147 – SNOW AND ICE, REMOVAL OF**

**History: Adopted by the Town of Mashpee: Art. I, as Ch. 4, Art. 4.6, Sec. 4.6.4, of the 1980 Code;**

**History: Art. II, 5-7-1984 ATM, Article 67, approved by Attorney General 9-17-1984.**

**Amendments noted where applicable.**

### **GENERAL REFERENCES**

Streets and sidewalks; See Ch. 150

## **ARTICLE I – Removal of Obstructing Vehicles**

### **§147-1 Authority:**

The Superintendent of Streets is authorized to remove or cause to be removed to some convenient place, including a public garage, any vehicle interfering with the work of removing or plowing snow or removing ice from any way in the Town.

### **§147-2 Liability for Charges:**

The cost of such removal and of the storage charges, if any, resulting therefrom shall be imposed upon the owner of such vehicle, but in no event shall such liability exceed twenty dollars (\$20).

## **ARTICLE II – Snow Removal by Town**

### **§147-3 Authority of Town:**

Pursuant to MGL C. 40, §6C, accepted by the Town on March 3, 1971, the Town shall remove snow and ice from private ways open to public use as may be designated by the Board of Selectmen, subject to the appropriation of funds for such purpose. Said removal of snow and ice from such a way shall not constitute a repair of a way.

### **§147-4 Identification of Private Ways:**

Prior to removing snow and ice from private ways, those ways shall be identified in a manner that meets the specifications of the Street Superintendent.

### **§147-5 Exemption of Streets with Speed Bumps:**

No private way shall be plowed or sanded by the Town if travel on such a way is impeded by structures known as “speed bumps.”

## **CHAPTER 150 – STREETS AND SIDEWALKS**

**History: Adopted by the Town of Mashpee: Art. I, as Ch. 4, Art. 4.10, of the 1980 Code;**

**History: Art. II, 9-22-1986 STM, approved by Attorney General 10-28-1986.**

**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Removal of snow and ice - See Ch. 147**

## **ARTICLE I – Miscellaneous Provisions**

### **§150-1 Purpose; Authority of Director of Public Works:**

This Chapter prescribes certain powers and duties of the Director of Public Works. He/she is authorized to issue permits for work to be performed upon any Town highway or section thereof.

**History: Amended 5-7-1984 ATM, Article 18, approved by Attorney General 9-17-1984**

### **§150-2 Street-Opening Permit Requirements:**

No Town highway shall be dug up or opening made therein for any purpose, nor shall any material be dumped or placed thereon or removed, or construction or structure placed thereon or removed therefrom, or changed, without the written permission of the Director of Public Works. The work shall be done under his/her supervision and to his/her satisfaction, and the entire expense of replacing and resurfacing the highway at the same level and in a good condition as before, with materials equal in specifications to those removed, shall be paid by the person to whom the permit was given or by whom the work was done.

**History: Amended 5-7-1984 ATM, Article 18, approved by Attorney General 9-17-1984**

### **§150-3 Bond Requirement:**

The Town may require a bond to guarantee the faithful and satisfactory performance of the work and payment for any damage to Town highways and facilities caused by or resulting from the operations authorized by such permit. The amount of said bond shall be not less than one thousand dollars (\$1,000) and not more than fifty thousand dollars (\$50,000). Except as provided herein, any person who digs up or makes an opening in a Town highway without a permit or violates any other provisions of the Chapter shall be punished by a fine of not more than two hundred dollars (\$200) for each day for a continuing offense.

### **§150-4 Access to Town Highways:**

**History: Amended 5-7-1984 ATM, Article 18, approved by Attorney General 9-17-1984**

- A. The fundamental objective of this section is threefold:
  - 1. To provide maximum protection of the public through the orderly control of traffic moving into and from a highway.
  - 2. To provide a uniform practice in the design and construction of entrances and exits.
  - 3. To provide the necessary drainage.
- B. Any owner of property abutting Town highways shall, before beginning any construction, make written application to the Director of Public Works on a form approved by him/her.
- C. Any owner of abutting property desiring to gain access to a Town highway shall do so only in strict accordance with the provisions of a permit issued by the Director.

- D. The following requirements are applicable to all commercial and industrial establishments, service areas and private residences having access to and/or through the right-of-way of a Town highway, insofar as the requirements for drainage, geometric design, signing, type and quality of workmanship, material used and the work performed in the areas providing ingress to said property are concerned.
1. The owners of any commercial and/or industrial establishments, service area and private residences abutting a Town highway or right-of-way who desire to gain access to a Town highway or right-of-way shall do so only after written permission has been issued by the Director of Public Works.
  2. The Director of Public Works shall examine the proposed access with reference to drainage, design, type and quality of workmanship, material to be used and the work to be performed in the area providing ingress and egress to and from the Town highway or right-of-way so as to provide maximum protection to the public through the orderly control of traffic moving onto and from the Town highway and to provide a uniform practice in the design and construction of entrances and exits and to provide necessary drainage.

**§150-5 Temporary Repairs on Private Ways:**

- A. The Town may make temporary repairs on private ways which have been opened to continual public use for a term of not less than five (5) years. Such temporary repairs shall consist of the filling of holes in the subsurface and repairs to the surface material and installation or correction of drainage. Materials used for such repairs shall, if practical, be the same or similar to those of the existing subsurface and/or surface of such ways. Work to be performed hereunder unless determined to be a public necessity by the Board of Selectmen upon written petition of abutters who own not less than fifty percent (50%) of the linear footage fronting on such private way.
- B. The cost of such temporary repairs shall be paid by the abutters to said private ways by a cash deposit or by a betterment assessment as hereinafter provided, and no work shall commence unless and until such cash deposit in the amount of the estimated cost of such repairs, as determined by the Superintendent of Streets to do the work, is paid over to the Town, or the Board of Selectmen has made a determination that betterment's will be assessed.
- C. If the Selectmen determine that betterment's will be assessed, the Selectmen shall assess betterment's upon the owners of estates which derive particular benefits or advantage from the making of such repairs on such private way. Such assessment shall be a sum equal, in the aggregate, to the total of such repairs. Except as otherwise provided, the provisions of MGL C. 80 relating to public improvements and assessments therefor shall apply to repairs to private ways ordered to be made under this section, provided that no assessment amounting to less than twenty-five dollars (\$25) shall be apportioned and no assessment may be apportioned into more than five (5) annual equal portions.  
**History: Amended 10-27-1982 STM, Article 32, approved by Attorney General 1-11-1983**
- D. Before any work commences, the Town shall be held harmless on account of any damages whatever caused by such repairs by agreements executed by the abutters who petitioned therefor in such form as may be approved by the Board of Selectmen.



**§150-6 Purpose; Authority of Director of Public Works:**

- A. Before the Town shall vote to accept any private way as a public way upon private petition, there shall have been filed with the Board of Selectmen a petition for acceptance, a plan of the way proposed for such acceptance, and releases from any and all damage claims resulting from the laying out, grading and construction of the way and the taking by eminent domain of any land necessary to lay out the way in such form as required by the Board of Selectmen. Such a petition for acceptance of a private way as a public way must contain the signatures of at least fifty percent (50%) of the owners of the land abutting said way; provided, however, that in a situation where two or more contiguous private ways are proposed for acceptance under one petition, it shall be sufficient if the petition contains the signatures of at least fifty percent (50%), in the aggregate, of all of the owners of the land abutting the contiguous ways.

**History: Amended 10-3-1994 ATM, Article 22, approved by Attorney General 1-18-1995.**

- B. If there is a plan on record at the Registry of Deeds showing the private way, it shall be used; otherwise, the Assessor's maps may be used.

- C. The Selectmen, with the assistance of the Director of Public Works and the Town Engineer, shall prepare an estimate of the total cost of preparation of necessary engineering plans and specifications, construction, reconstruction and repair costs, if any, and as applicable, and legal costs, if any, to bring the way into compliance with at least the minimum standards set forth in the rules and regulations of the Planning Board adopted pursuant to the Subdivision Control Law and to any higher or lower degree of standards recommended by the Director of Public Works if found to be reasonable and/or necessary by the Board of Selectmen.

**History: Amended 10-1-1990 ATM, Article 5, approved by Attorney General 12-18-1990.**

- D. The Selectmen shall, thereafter, hold a public hearing on the petition for acceptance of the private way. Notice shall be given of such hearing by publication in a newspaper of general circulation in the Town at least seven (7) days prior to the date assigned for the hearing, and said notice shall identify the private way and the proposed acceptance. At this hearing the Selectmen shall inform those in attendance of the total estimated cost to be borne by the abutting property owners of property deemed to be benefited by the acceptance and improvements

**History: Amended 5-18-1981 ATM, Article 37, approved by Attorney General 8-19-1981.**

- E. Upon receipt of the written approval of those property owners bearing fifty (50%) or more of the estimated cost, the Selectmen shall proceed to lay out the way and, upon completion of the layout, shall cause an appropriate article to be inserted in the next Annual Town Meeting for action. Upon approval of the article by the voters of the Town Meeting, following a hearing and report to the Town Meeting by the Planning Board in accordance with MGL C. 41, §81I, the proposed work to construct, reconstruct or repair the private way shall be put out to public bid, and/or the Director of Public Works shall be requested to furnish a detailed cost estimate for the performance of the work by the Town, and within six (6) months following completion of work, the total cost shall be apportioned by the Selectmen, with the assistance of the Town Engineer and the Board of Assessors, to the owners of the land abutting the way and to any other owners of land deemed to be benefited, and betterments shall be assessed to them in accordance with the provisions of the General Laws of the Commonwealth for assessing betterments

**History: Amended 5-18-1981 ATM, Article 37, approved by Attorney General 1-11-1983.**

**History: Amended 10-27-1982 STM, Article 33, approved by Attorney General 1-11-1983.**

**History: Amended 10-1-1990 ATM, Article 5, approved by Attorney General 12-18-1990.**

- C. The provisions of this section shall not be deemed in any way to restrict the authority of the Board of Selectmen to initial action on its own to cause any private way to be accepted as a public way.

D.

**§150-7**

**Conversion of Private Roads to Public Roads:**

**History: Added 8-25-1986 STM, approved by Attorney General on 10-17-1986.**

- A. The Board of Selectmen shall annually review and designate, as appropriate, private ways in the Town for consideration for conversion to public ways. This review by the Board of Selectmen shall be concluded by March 1 of each year. The Director of the Department of Public Works shall assist the Board of Selectmen in the review and shall make recommendations.
- B. The Board of Selectmen shall establish a priority list of private roads most in need of conversion to public roads after the completion of the annual review.
- C. The Board of Selectmen shall submit to the Annual Town Meeting or to any Special Town Meeting an article or articles seeking appropriation of funds and authorization to perform necessary engineering and legal work for the purpose of preparing an article for subsequent Town Meeting action to acquire the private road by eminent domain, purchase or gift.
- D. The Board of Selectmen shall, after receiving Town Meeting authorization to perform engineering and legal work, cause an article to be inserted in the Annual Town Meeting Warrant seeking permission to acquire the fee ownership or an easement in the private road by exercise of eminent domain or by deed or gift, and shall request authority to assess betterments, pursuant to MGL C. 80 and any other applicable authority, to secure payment for the cost of the acquisition of the public ownership or easement and any improvements made to the road.

## **ARTICLE II – Numbering of Buildings**

**§150-8**

**Authority:**

The Selectmen may require, determine and prescribe the numbering, changes in numbering and renumbering of buildings on or near the lines of any and all public and private way within the Town whenever, in their opinion, public convenience and necessity may so require and may prescribe the method and by whom it may be done.

**§150-9**

**Provisions of Numbers; Reimbursement:**

The Selectmen may procure and provide numbers of suitable material and design and may cause or order the same to be affixed to such said buildings along such ways and in such manner as they may determine, and they may require the owners or occupants of such buildings to reimburse the Town for the expense thereby incurred.

**§150-10**

**Permit Required for Special Materials and Designs:**

Owners or occupants of particular buildings may affix and maintain thereon numbers and numbering devices of special material and design, provided that a permit in writing therefor has first been obtained from the Selectmen.

**§150-11 Tampering with Numbers:**

No person shall willfully remove, deface or change numbers or numbering devices placed upon buildings under the provisions of this Chapter, and no person shall affix or maintain numbers or numbering devices on buildings along the lines of public or private ways in violation of the provisions of this Chapter.

**§150-12 Promulgation of Rules and Regulations:**

The Selectmen may make reasonable rules and regulations, to take effect when filed with the Town Clerk and after publication in a newspaper published in the Town, relative to the numbering, changes in numbering and renumbering of buildings along the lines of public and private ways.

**§150-13 Violations and Penalties:**

Whoever violates any provision of this Chapter, or any order, rule or regulation made by the Board of Selectmen under authority of this Chapter, shall be punished by a fine not to exceed fifty dollars (\$50).

**Chapter 153 – SWIMMING POOLS**

**History: Adopted by the Town of Mashpee 5-18-1981 ATM, Article 36, approved by Attorney General 8-19-1981. Amendments noted where applicable.**

**§153-1 Fence Requirements:**

All private outdoor swimming pools shall be fenced around the entire perimeter of the pool to a height not less than five (5') feet from grade, except for any fence in existence on the effective date of this chapter which may have a height of not less than four (4') feet.

**§153-2 Violations and Penalties:**

Any person violating the provisions of this chapter shall be punished by a fine not to exceed twenty dollars (\$20) for each offense.

**CHAPTER 163 – TRAILERS AND MOBILE HOMES**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.2, of the 1980 Code. Amendments noted where applicable.**

**GENERAL REFERENCES**

**Zoning - See Ch. 174.**

**§163-1 Licensing Requirements:**

No license shall be granted under the provision of MGL C. 140, §32A to §32L, inclusive, except as permitted by the Zoning Bylaws<sup>1</sup> of the Town and by the unanimous vote of the Board of Health. No renewal of such license shall be granted except by the unanimous vote of the Board of Health.

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<sup>1</sup> Editor's Note: See Ch. 174, Zoning.

## **§163-2 Promulgation of Rules and Regulations:**

The Board of Health of the Town of Mashpee shall have the power to promulgate rules and regulations for the enforcement of the provisions of this chapter, and for the purpose of ensuring the maintenance of tourist camps and structures therein in a manner compatible with public health and safety.

## **§163-3 Definitions:**

**TRAILER** - A mobile home, travel trailer, pickup coach, motor home or camping trailer, all as defined in §174-3 of the Zoning Bylaws of the Town, but excluding vehicles used only for the transportation of materials, products or animals.

## **§163-4 Use Regulations:**

Trailers may be parked throughout the Town subject to the following regulations. No person shall park, store or occupy a trailer or tent for living or business purposes except:

- A. In a garage or other accessory building or in the rear half of a lot owned or occupied by the owner of the trailer (if placed so as to conform to the yard requirements for main buildings in the same zone), but its use for business and living purposes is prohibited (unless temporary occupancy is permitted by the Board of Appeals incidental to the construction of a permanent home).
- B. The owner of the land may permit occupancy of such land by nonpaying guests using a trailer or tent for living purposes for a period not exceeding thirty (30) days in any calendar year. A permit for this purpose must be obtained from the Selectmen before the land can be occupied. No more than one (1) guest trailer is permitted with any one (1) residence or on any one (1) lot.
- C. A temporary office incidental to a construction on or development of the premises on which the trailer is located.
- D. Youth groups, at the direction of the Conservation Commission on lands managed by the Conservation Commission, subject to such conditions as the Conservation Commission may promulgate from time to time for use of such land.

## **CHAPTER 168 – VEHICLES, UNREGISTERED**

**History: Adopted by the Town of Mashpee as Ch. 4, Art. 4.5, Sec. 4.5.4, of the 1980 Code.**  
**Amendments noted where applicable.**

## **§168-1 Vehicles; Unregistered:**

No person shall have more than one (1) unregistered car or truck ungaraged on his/her premises in a residential district at any time. In no event will an unregistered car or truck be stored in the front yard. Violators shall be fined in an amount not exceeding twenty dollars (\$20) for each offense.

## **CHAPTER 170 – WATERWAYS, USE OF**

**History: Adopted by the Town of Mashpee as Ch. 4 Art. 4.7, of the 1980 Code**  
**History: Amended in its entirety 5-6-1997 ATM, Article. 37, approved by Attorney General 9-25-1997.**  
**Subsequent amendments noted where applicable.**

## **§170-1 Definitions:**

**Foreshores** - A foreshore is the part of a waterway shore that is between average high water and average low water (tidal and seasonal), or in other words beaches and marsh.

**Headway Speed** - The slowest speed at which a watercraft may be operated and maintain steerage way.

**Harbormaster** - Chief Harbormaster and Assistant Harbormasters duly empowered by the General Laws of Massachusetts.

**Personal Watercraft** - A small vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by persons sitting, standing, or kneeling on the vessel. The term includes but is not limited to a jet ski, wet bike, or surf jet so-called, plus motorized or propelled surfboards.

**Persons** - Includes individuals, corporations, societies, associations, partnerships, and trusts.

**Private Swim Area** - A privately owned (e.g. by corporations, homeowners associations, etc.) area, belonging to more than one family unit, which is defined by signs and floating markers and that has been approved by the Selectmen and the Harbormaster as a private swim area.

**Slow, No Wake** - A slow speed at which a watercraft can still be controlled, yet produce no wake. Approximately six (6) miles per hour. See Headway Speed.

**Watercraft** - Any vessel or object used to navigate the waterways. Includes but is not limited to, a motor boat, row boat, jet boat, sail boat, dinghy, inflatable boat or personal watercraft.

**Waterways** - Any body of water upon which watercraft can be used. In this bylaw, the definitions as found in MGL C. 90, §1 Definitions, as published and as may be amended, shall have the same meaning.

## **§170-2 Promulgation of Regulations; Posting of Signs:**

- A. The Harbormaster shall promulgate regulations to implement the provisions of this chapter.
- B. The Harbormaster, Assistant Harbormasters, or Waterways Assistants shall see that speed, water-skiing, and personal watercraft regulations are posted at public landings on waterways within the town. Further signs and markers may be placed at strategic locations throughout the waterways.

## **§170-3 Enforcement; Violations and Penalties:**

- A. Unless otherwise specified, the provisions of this chapter as well as MGL C. 90B shall be enforced by the Harbormaster and Assistant Harbormasters, and by police officers empowered to patrol the waters of the Town of Mashpee.
- B. Whoever violates any of the provisions of this chapter and refused to obey the lawful and reasonable orders of those empowered to enforce same or resists them in the discharge of their duties shall be fined according to the fine schedule set forth in regulations promulgated by the Harbormaster and approved by the Board of Selectmen pursuant to §170-2 (A) of this chapter. (Mashpee Waterways Regulations, Mashpee Mooring Regulations and Mashpee Lake Landing Regulations). Violation of this chapter may be enforced by non-criminal disposition pursuant to MGL C. 40, §21 (D).

**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**

**§170-4      Speeds:**

- A.    Maximum Speed for watercraft is “Slow, No Wake” (Headway Speed):
  - 1.    during the period from one (1) hour after sunset to one (1) hour before sunrise, in any area of any fresh water waterway.
  - 2.    in posted areas
  - 3.    within one hundred fifty (150’) feet of:
    - (a)    shore
    - (b)    bathers (also see Swim area)
    - (c)    vessels propelled by means other than machinery
    - (d)    vessels not underway (for example moored or anchored)
    - (e)    commercial docking or mooring areas
    - (f)    private docking or mooring areas
  - 4.    On the following bodies of tidal water:
    - (a)    Great River, except in any planing channel as may be posted in Upper Great River
    - (b)    Little River
    - (c)    Santuit River
    - (d)    Mashpee River
    - (e)    Ockway Bay, except in any planing channel as may be posted
    - (f)    In the Mashpee part of Shoestring Bay and Simons Narrows
  - 5.    During conditions of low visibility
- B.    A boat or personal watercraft operator within sight of a diver’s flag shall proceed with caution and within a radius of one hundred (100’) feet of such flag shall proceed at a speed not to exceed three (3) miles per hour.

**§170-5      Water-skiing; Tubing; Kneeboarding:**

- A.    All water-skiing, tubing and kneeboarding is subject to the applicable provisions of the General Laws of the Commonwealth, as amended, and to the further restriction that no water-skiing, tubing or kneeboarding is allowed in Mashpee in or on the freshwater ponds (with the exception of Mashpee-Wakeby Lake) before the hour of 10:00 am and after the hour of 7:00 pm.  
**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**
- B.    Water-skiing, tubing and kneeboarding is permitted on fresh water ponds and tidal waters of Popponesset Bay, Nantucket Sound, and Waquoit Bay subject to the following restrictions:

1. Not within one hundred fifty (150') feet of:
  - (a) Shoreline, except where posted as permitted
  - (b) Swimmers
  - (c) Watercraft underway by means other than motors
  - (d) Watercraft not underway (for example moored or anchored)
  - (e) Areas with posted speed limits
  - (f) Commercial docking or mooring areas
  - (g) Private docking or mooring areas
2. Prohibited activities are:
  - (a) Starting from or stopping on shore (except where posted as permitted)
  - (b) Drawing more than two (2) skiers
  - (c) On tidal or salt water, water-skiing from one half (1/2) hour before sunset to one half (1/2) hour after sunrise.
  - (d) Water-skiing, tubing, and kneeboarding or towing persons(s) in any manner on the following bodies of tidal water:
    - (1) Great River
    - (2) Little River
    - (3) Santuit River
    - (4) Mashpee River
    - (5) Hamblin Pond
    - (6) Jehu Pond
    - (7) Sage Lot Pond
    - (8) Ockway Bay
    - (9) Shoestring Bay and Simons Narrows
- C. Except in Mashpee-Wakeby Lake, all turns shall be counter clockwise.  
**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**
- D. In addition to the operator, there shall be a competent observer at least twelve (12) years of age on board to observe the person or persons being towed.
- E. All water-skiers, tubers, and kneeboarders shall wear a wearable Personal Flotation Device. (Type III or better; Life belts are not acceptable).

**§170-6 Personal Watercraft Operation:**

- A. All Personal Watercraft operation is subject to the applicable provisions of the General Laws of the Commonwealth, as amended, and to the further restriction that no motor or propelled surfboard or other personal watercraft operation is allowed in Mashpee in or on the freshwater ponds (with the exception of Mashpee-Wakeby Lake) before the hour of 10:00 am and after the hour of 7:00 pm. For Mashpee-Wakeby Lake, personal watercraft are not permitted after the hour of 7:00 pm or sunset, whichever comes first. (323 CMR 2.13)

**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**

- B. Personal Watercraft operation is permitted on fresh water ponds and tidal waters of Popponesset Bay, Nantucket Sound, and Waquoit Bay subject to the same restrictions for watercraft above. In addition, prohibited activities are:
1. Towing any object using a personal watercraft
  2. Operation between the hours of sunset and sunrise or when vision is unduly restricted by weather
  3. Operation on bodies of water of less than seventy-five (75) acres
  4. Operation by a person under the age of sixteen (16)
  5. Operation by a person sixteen (16) or seventeen (17) years of age without first having received a safety certificate required by 323 CMR 4.03(2)
- C. All Personal Watercraft operators shall wear a wearable Personal Flotation Device (Type III or better; Life belts are not acceptable.)

**§170-7 Swim Area:**

- A. **Public Bathing Area:** No Person shall operate a watercraft:
1. within one hundred fifty (150') feet of a public bathing area
  2. within one hundred fifty (150') to three hundred (300') feet of a public bathing area except at headway speed.
- B. **Private Swimming Area:** No person shall operate a motorboat within one hundred fifty (150') feet of the shoreline which is being used as a private swim area.

**§170-8 Divers and Diving:**

Any person or persons skin diving or scuba diving shall:

- A. Display a diver's flag constructed of rigidly supported material at least twelve by fifteen (12"x15") inches in area of red background with a white diagonal stripe.
- B. Display such flag on a boat or surface float extending a minimum distance of three (3') feet from the surface of the water, or to such other height in excess of three (3') feet as to be sufficient to be visible to passing boats.
- C. Stay in an area within one hundred (100') feet of such displayed diver's flag while at or near the surface of the water.



- D. Recreational diving or swimming in marked boat channels is prohibited.

**§170-9 Moorings:**

**A. General.**

1. The location, type and adequacy of every marker, float, buoy, mooring, or fishing device (including but not limited to: lobster pots, crab pots, conch or whelk pots, and toad fish traps) must be approved by the Harbormaster or an Assistant Harbormaster before placement. Any marker, float, buoy, mooring, or fishing device may be inspected, removed or relocated whenever, in the judgment of the Harbormaster or an Assistant Harbormaster, the safety of the other vessels or properties or maximum use of the area requires such action. The expense of such inspection, removal, or relocation shall be the responsibility of the owner.
2. Each marker, float, or buoy and markers for fishing devices shall be properly marked with the identification of the owner in a manner prescribed by the Harbormaster as promulgated in the Mashpee Mooring Regulations.
3. During the period 1 June through 30 September, mooring balls shall be used: from 1 October through 31 March, mooring balls or winter buoys may be used. Winter buoys (sticks) or numbered markers completely submerged onto the bottom shall be used. From 1 April through 31 May, only winter buoys (sticks) or mooring balls may be used. (Submerged markers must be removed.)

- B. **Permits:** The Harbormaster shall have the exclusive right to issue permits for the placement of moorings for vessels, boats, rafts and floats held by anchors or bottom moorings at any locations within the territorial jurisdiction of the town.

- C. **Regulations:** The Harbormaster shall adopt regulations for anchoring of and the placement and maintenance of moorings to anchor boats, vessels, rafts, and floats and make these regulations available on request to any applicant for a permit.

- D. **Fees:** The Board of Selectmen shall establish a fee schedule for mooring permits. The Harbormaster shall be responsible for the annual collection of the fees for each mooring permit he issues. The revenue shall be added to the Waterways Improvement Fund to be used for dredging or other waterways related expenses.

**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**

- E. If the owner of a mooring does not use the mooring for the designated purpose for two (2) consecutive years, the Harbormaster may revoke or decline to renew the mooring permit.

**§170-10 Abandonment:**

- A. The Harbormaster or an Assistant Harbormaster may take immediate action to remove any vessel, mooring, or other object without following the procedures below if, in his judgment, such action is necessary to protect life or property or if such object is a hindrance to navigation.
- B. No vessel, mooring, or other object shall be abandoned, sunk or otherwise placed where it may constitute a danger to navigation. Any object so placed, or any vessel improperly secured, swamped, sunk, washed ashore or found in a restricted area shall be removed and relocated by the owner at the direction of the Harbormaster or an Assistant

Harbormaster. If corrective action is not taken after seventy two (72) hours notice to the owner, or if the owner is not known, after notice has been posted for the same period at the Mashpee Town Hall, or on or near such object, the Harbormaster or Assistant Harbormaster may take corrective action. The expense of such removal or relocation and any liability incurred therefor shall be the responsibility of the owner.

- C. In the event of a violation of Subsection B, the Harbormaster, after removing the object pursuant to the foregoing section, shall notify the owner, or if the owner is not known, after notice has been posted at Mashpee Town Hall, or on or near the object, that he intends to dispose of the property unless it is claimed within ninety (90) days. The Town may use the property, if serviceable, for an indefinite period. When no longer of use to the Town, said property will be disposed of. Any costs of disposal may be assessed to the owner, if known. Any serviceable item of value will be offered for sale at public auction. All proceeds from said sale shall be used to defray the cost and expenses of removing, giving notice and sale, and the balance of the proceeds shall be turned over to the owner or, if the owner is unknown, held by the Town Treasurer for a period of one (1) year, subject to claim by owner. After that time, the proceeds will be transferred to the Waterways Improvement Fund. Any property which is not serviceable or repairable will be discarded.

**§170-11 Pollution:**

The discharge or disposal of fuel, oil, dead fish or their parts, waste, rubbish, debris, or sewage (whether treated or untreated) in the waters, shores or foreshores of Mashpee is prohibited.

**§170-12 Operation of Vessels Under the Influence of Intoxicating Liquor or Controlled Substance:**

No person shall operate any vessel on the waters of the Commonwealth situated in the Town of Mashpee under the influence of substances as described in MGL C. 90B §8.

**§170-13 Watercraft Equipment:**

All watercraft equipment operated in the Town of Mashpee shall meet the equipment requirements of 323 CMR 2.06.

**§170-14 Watercraft Operation without Personal Flotation Devices or in Overloaded or Unsafe Condition:**

A. No person shall operate a vessel in the Town of Mashpee:

1. Without an approved wearable personal flotation device on board for each occupant, as required under MGL C. 90B, §5 and 323 CMR 2.07 (10, 14, 15).  
History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General on February 13, 2007.
2. In an overload condition as defined in MGL C. 90B §12A, and 323 CMR 2.07 (7).  
History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General on February 13, 2007.
3. In an unsafe condition as defined in MGL C. 90B §12A, and 323 CMR 2.07 (2) Guardrails.  
History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.

**§170-15 Public Access Board Facilities:**

**A. Mashpee Lake Boat Landing.**

1. The Board of Selectmen may, after public hearing, suggest to the Public Access Board new or changed regulations over the maintenance and operation of the state owned boat landing at Mashpee Lake. Regulations adopted, approved, and promulgated by the Commonwealth shall become effective as of the date of publication in a newspaper having general circulation in the Town.

**History: Amended 10-16-2006, ATM, Article 32, approved by Attorney General 2-13-2007.**

**§170-16 Jurisdiction; Severability:**

- A. Nothing contained herein shall be held or construed to supersede, conflict with, interfere with or limit jurisdiction of the United State Government with respect to the enforcement of the navigation, shipping, anchorage and associated laws of the United States or to diminish the provisions of any lawful regulation of the Division of Marine and Recreational Vehicles or the laws of the Commonwealth of Massachusetts.
- B. In the event that any provision, section or clause of this chapter is hereafter judicially found to be invalid, such decision, invalidity or voidance shall not affect the validity of the remaining portions of this Chapter.

**CHAPTER 171 – WEIGHTS AND MEASURES**

**History: Adopted by the Town of Mashpee: Art. I, 11-13-1989 STM, approved by Attorney General 2-16-1990.**  
**Amendments noted where applicable.**

**ARTICLE I– Sealer of Weights and Measures Fees**

**§171-1 Enumeration of Fees:**

The Sealer of Weights and Measures shall receive the following fees, payable to the Town of Mashpee for sealing the following weighing or measuring devices:

<b>Balances and Scales (pounds)</b>	<b>Fee</b>
Over 10,000	\$60.00
5,000 to 10,000	\$50.00
1,000 to 5,000	\$25.00
100 to 1,000	\$20.00
10 to 100	\$15.00
0 to 10	\$10.00
<b>Weights (each)</b>	
Avoirdupois	\$ 2.00
Metric	\$ 2.00
Apothecary	\$ 2.00
Troy	\$ 2.00
<b>Capacity Measures</b>	
Vehicle tanks	
Each indicator	\$ 6.00
Each 100 gallons or fraction thereof	\$ 3.00
Liquid	
1 gallon or less	\$ 2.00
More than 1 gallon	\$ 2.00
<b>Balances and Scales (pounds)</b>	<b>Fee</b>
<b>Liquid Measuring Meters</b>	
Inlets	
½ inch or less, oil, grease	\$ 5.00
<b>Balances and Scales (pounds)</b>	<b>Fee</b>
More than ½ inch to 1 inch, gasoline	\$12.00

More than 1 inch	
Vehicle tank pump	\$20.00
Vehicle tank gravity	25.00
Bulk storage	40.00
Company supplies prover	25.00
<b>Pumps</b>	
Each stop on pump	3.00
<b>Other Devices</b>	
Taximeters	\$10.00
Odometer-Hubodometer	10.00
Leather measuring (semiannual)	5.00
Fabric measuring	5.00
Wire, rope, cordage	6.00
<b>Linear Measures</b>	
Yard Sticks	\$ 2.00
Tapes	2.00
<b>Miscellaneous</b>	
Milk jars (per gross)	\$ 8.00
Dry Measures	5.00

**History:** Adopted by the Town of Mashpee, 2-1-1988 Article 18. STM approved by Attorney General 3-16-88.<sup>1</sup>  
Amendments noted where applicable.

## **CHAPTER 172 – WETLANDS**

**History:** Adopted by the Town of Mashpee: 2-1-1988, Article 18, STM, Approved by Attorney General 3-16-1988. <sup>1</sup>  
Amendments noted where applicable.

### **GENERAL REFERENCES**

**Conservation lands - See Ch. 173**

**Zoning - See Ch. 174**

#### **§172-1 Purpose:**

The purpose of this Chapter is to protect the Wetlands, related water resources and adjoining land areas in the Town of Mashpee by prior review and control of activities deemed by the Conservation Commission likely to have significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat and biodiversity, rare species habitat including rare plant species, recreation, agriculture and aquaculture values (collectively, “the wetland values protected by this chapter”). This Chapter is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, G.L. Chapter 131, Section 40 and Regulations thereunder, 310 CMR 10.00.

**History:** Amended 10-2-1995 ATM, Article 11, approved by Attorney General 12-1-1995.

#### **§172-2 Jurisdiction:**

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; lakes; ponds; streams; creeks; beaches; dunes; estuaries; the ocean; lands under waterbodies; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; lands within on hundred (100') feet of any of the aforesaid resource areas; rivers; and lands within two hundred

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<sup>1</sup> Editor's Note: This bylaw superseded former Ch. 4, Art. 4.3, of the 1980 Code, Rules and Regulations Regarding Wetlands.

(200') feet of rivers (collectively the "resource areas protected by this bylaw"). Said resources shall be protected whether or not they border surface waters.

History: Amended 5-6-1997, ATM, Article 33, approved by Attorney General 9-25-1997

**§172-3 Exceptions:**

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other communication services, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards in regulations adopted by the Commission.
- B. The permit and application required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use, provided that written notice has been given to the Commission prior to the application of any agricultural chemical, and provided that the work conforms to the performance standards in regulations adopted by the Commission.
- C. The normal application and permit prior to commencement of work (as described in other sections of this Chapter) shall not be required for emergency work. Emergency work may go forth under an emergency project approval, provided that:
  - 1. The work must be certified by the Commission or its Agent and some other agency of the Commonwealth or the Commissioner of the Department of Environmental Protection, as necessary for the protection of the health and safety of the public.
  - 2. The emergency work must be performed within thirty (30) days of issuance of an Emergency Certificate by the Commission and shall be limited to the place designated on said Emergency Certificate. Emergency work shall be further limited to only work/activities deemed necessary to abate the emergency.
  - 3. Prior to the start of work, or within forty-eight (48) hours thereafter, a plan and/or written narrative describing the nature of the emergency work must be submitted to and approved by the Commission or its Agent.
  - 4. No emergency work may begin until after an on-site meeting with the Mashpee Conservation Agent/Assistant Conservation Agent or a designated representative of the Commission.
  - 5. At this on-site meeting, the Agent/Assistant Agent or other designated representative of the Commission may impose conditions (relating to work/construction methodology) deemed necessary to protect the wetland values of Chapter 172 of the Mashpee Code. If so, said conditions will be provided in writing at the time of said on-site meeting, or as soon thereafter as possible. Failure to agree to or follow these conditions shall be due cause for stopping all work.
  - 6. Upon failure to meet the above requirements, the Commission may order all such work stopped and, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

7. A permit application, as per normal procedures as described in other sections of this Chapter, may be required by the Commission at any time from the commencement of work until sixty (60) days thereafter. Said application, if required, shall address the emergency work and/or restoration/mitigation work deemed necessary to protect the wetland values of Chapter 172.

**History: Amended 10-6-1997, ATM, Article 13, approved by Attorney General 3-9-1998.**

- D. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, MGL C. 131, §40, shall not apply.

#### **§172-4 Application for Permits and Requests for Determination:**

- A. A written application shall be filed with the Commission to perform activities regulated by this chapter affecting resource and adjacent areas protected by this chapter. The application shall include such information and plans as are required by the rules and regulations of the Commission, and such application shall be amended to include such further information and plans as may subsequently be deemed necessary by the Commission upon review to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.

**History: Amended 10-3-1994 ATM, Article 20, approved by Attorney General 1-18-1995.**

- B. The Commission may accept as the application and plans under this chapter the following:

**History: Amended 10-7-1991 ATM, Article 19, approved by Attorney General 1-7-1992.**

1. An Administrative Review - Level 1 application, including a request for determination of applicability (Form 1 of 310 CMR 10.99) and a form as required by the rules and regulations of the Commission. [Such form will require by Massachusetts regulations, 310 CMR 10.05(3)(b)(1), notice in a local newspaper of the required hearing.]

2. A notice of intent (Form 3 of CMR 10.00) filing as prescribed in 310 CMR 280.21 through 280.25 and Chapter 172 of the Mashpee Code and its regulations.

**History: Amended 10-15-2012 ATM, Article 9, approved by Attorney General 11-7-2012.**

- C. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may, in writing, request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- D. At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, MGL C. 131, §40. The Commission may waive the filing fee on an application or request filed by a government agency.

#### **§172-5 Notice and Hearings:**

- A. Notification.

**History: Amended 5-7-1991 ATM, Article 20, approved by Attorney General 1-7-1992.**

1. Any person filing an Administrative Review - Level 1 application with the Commission shall, after being given written notice by the Commission of the time and date of the required hearing, pay a fee as required by the Commission to have notice of said hearing posted, not less than five (5) days prior to said hearing, in a newspaper of general circulation in the Town of Mashpee. Said notice shall be in a form prescribed by the Commission, shall specify the time and date of said

hearing, shall describe the proposed activity and the location thereof and shall state where the application and plans may be examined by interested parties.

2. Notice to abutters shall be by certified mail, return receipt requested, and shall be received by said abutters no less than five (5) days prior to the date of the hearing. Said notice shall be in a form prescribed by the Commission, shall specify the time and date of said hearing, shall describe the proposed activity and the location thereof and shall state where the application and plans may be examined by interested parties. The Commission and/or its Agent, at its discretion, may require the applicant to notify (in the same aforementioned manner) additional property owners, to include all property owners within three hundred (300') feet of the boundary of the property on which the work is proposed. If such additional notification is deemed necessary by the Commission, notice of such shall be provided to the applicant with the written notice of the time and date of the hearing for said notice of intent.

**History: Amended 10-15-2012 ATM, Article 10, approve by Attorney General 11-15-2012**

**History: Amended 5-4-2015 ATM, Article 26, approved by Attorney General 8-11-2015**

(a) Definitions

Linear-shaped Project for purposes of 310 CMR 10.05(4) means a project that is substantially longer than it is wide and is a project for the construction, reconstruction, or substantial enlargement of facilities that will be used in the service of the public or provide electric, gas, sewer, water, telephone, telegraph and other communication services, a project by a public agency or authority for the construction, reconstruction, expansion, repair or maintenance of public roads, bike paths, or other paths for pedestrians, or public railways.

**History: Added 5-4-2015 ATM, Article 26, approved by Attorney General 8-11-2015**

Project Locus means the lot on which an applicant proposes to perform an activity subject to regulation under MGL C 131 §40.

**History: Added 5-4-2015 ATM, Article 26, approved by Attorney General 8-11-2015**

Project Site means the area within the Project Locus that comprises the limit of work for activities, including but not limited to, dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways, and the installation of drainage, storm water treatment, environmentally sensitive site design practices, sewage and water systems.

**History: Added 5-4-2015 ATM, Article 26, approved by Attorney General 8-11-2015**

(b) Notice Requirements

Any person filing a notice of intent or request for an amended order of conditions with the Commission shall, after being given written notice by the Commission of the time and date of the hearing required, provide notification to all abutters. Notwithstanding the foregoing, the requirement to provide abutter notification is subject to the following provisions. An applicant is required to provide notification to an abutter whose lot is separated from the project locus by a public or private street or body of water only if the abutter's lot is within one hundred (100') feet from the property line of the project locus. An applicant who proposes work solely within the land under water bodies or waterways, or solely within a lot with an area greater than fifty (50) acres, is required to provide

notification only to abutters whose lot is within one hundred (100') feet from the project site. An applicant proposing a linear-shaped project greater than one thousand (1,000') feet in length is required to provide notification only to abutters whose lot is within one thousand (1,000') feet from the project site. Abutter notification is not required for projects proposed by the Massachusetts Department of Transportation Highway Division, pursuant to Chapter 472 of the Acts of 1993 as approved on January 13, 1994. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list available in the office of the Town Assessor.

**History: Added 5-4-2015 ATM, Article 26, approved by Attorney General 8-11-2015**

3. In a riverine situation, the Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

**History: Amended 10-15-2012 ATM, Article 10, approve by Attorney General 11-15-2012**

- a. Adjacent Communities
- b. NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02144-2104
- c. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110

- B. When the filer of a request for determination is other than the owner, the notice and copy of the request shall also be mailed to the owner.
- C. The sworn affidavit of the applicant, or his/her representative, as to such notification, together with a copy of the notice, a list of addresses and return receipts, shall be filed with the Commission prior to the hearing.
- D. The Commission shall conduct a public hearing within twenty-one (21) days after receipt of a complete application or request for determination. Notice thereof, at the expense of the applicant, shall be published in a newspaper of general circulation in the Town not less than five (5) business days prior to the hearing.
- E. No such application shall be deemed complete until all other obtainable local permits and licenses for the proposed activity have been applied for and proof of applications(s) filed with the Commission. In the event of a demonstrated hardship, the Commission may waive this requirement upon request of the applicant.  
**History: Amended 10-15-2012 ATM, Article 11, approved by Attorney General 11-9-2012**
- F. The Commission shall issue its determination or an order of conditions concerning the proposed activity within twenty-one (21) days after the close of the public hearing. The public hearing may be continued by the Commission, with the consent of the applicant, to a date certain announced at the hearing, for the receipt additional information or plans deemed necessary by the Commission from the applicant or others or for comments and recommendations of boards and officials as provided in §172-6. In the event that an applicant objects to a continuance or neglects to furnish information requested by the Commission, the hearing shall be closed, and the Commission shall act upon such information as is before it.



- G. The Commission in an appropriate case may combine the hearing under this chapter with that conducted pursuant to the Wetlands Protection Act, MGL C. 131, §40.

**§172-6 Coordination with Other Requests:**

Any person filing an application or a request for determination with the Commission shall provide such notice thereof at the same time to Town agencies as prescribed by regulations of the Commission. The applicant or his/her representative shall furnish a sworn affidavit as to such notification.

**§172-7 Permits; Determinations and Conditions:**

- A. If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

**History: Amended 10-2-1995 ATM, Article 10, approved by Attorney General 12-1-1995.**

**History: Amended 5-6-1997 ATM, Article 34, approved by Attorney General 9-25-1997.**

1. Lands within one hundred (100') feet of specific resource areas, and lands within two hundred (200') feet of rivers, are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands, rivers, streams, lakes, ponds, creeks, estuaries, the ocean and/or other resource areas have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a continuous naturally vegetated buffer strip (NVBS) within the aforesaid one hundred (100') foot (or two hundred (200') feet for rivers) area with the aim of minimizing adverse impacts to resource areas and the wetland values of Chapter 172. (This requirement will not preclude access pathways through said NVBS, as determined by regulations for this Chapter.) Said NVBS shall be a minimum of fifty (50') feet in width unless the applicant convinces the Commission (as per the provisions of Section 12 of this Chapter) that:

- (a) The NVBS (or part of it) may be disturbed and/or diminished without harm to the values protected by this Chapter, or
- (b) That reducing the scope of work/alteration is not possible.

2. Areas within two hundred (200') feet of rivers.

- (a) Notwithstanding the above, in the case of areas within two hundred (200') feet of rivers, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Chapter, has proved by a preponderance of credible evidence that there is no practicable alternative to the proposed project with less adverse effects, and, as well, should there be no such practicable alternative, that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is

reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives, and overall project costs.

3. **Waivers of Requirements.**

**History: Amended 10-2-2000 ATM, Article 25, approved by Attorney General 1-12-2001.**

**History: Amended 5-7-2001 ATM, Article 27, approved by Attorney General 8-17-2001.**

- (a) The Commission may, at its discretion for good cause shown, grant waivers from the requirements of one or more of the regulations and/or performance standards pursuant to Chapter 172. Such waivers are intended to be granted only in rare and unusual cases, and only when resource protection would be enhanced relative to preexisting conditions.
- (b) A waiver shall be granted only for the following reasons and conditions:
  - (1) It shall be the responsibility of the applicant to provide the Commission with the necessary information and plans which the Commission may request in writing and/or at a public hearing, in order to enable the Commission to ascertain impacts to the wetland values of Chapter 172. The failure of the applicant to furnish any information which has been so requested shall result in the denial of a request for a waiver pursuant to this subsection.
  - (2) The Commission may grant a waiver from the regulations for Chapter 172 when portions of the Buffer Zone between the proposed project and adjacent resource area(s) are previously altered and/or are not within the control of the project owner/applicant, such as public or semi-public pedestrian and vehicular access-ways.
  - (3) The Commission may grant a waiver from the regulations for Chapter 172 only upon a finding by the Commission that a project will improve the natural capacity of a resource area to protect the wetland values identified in Section 1 of this bylaw. Further, any waiver pursuant to this sub-section, will only be granted when:
    - 1) best-available technologies/methodologies are utilized to improve the natural capacity of any resource area to protect the relevant wetland values inherent to the site, and
    - 2) any adverse effects on wetland values are minimized, to the greatest extent feasible, by carefully considered conditions. However, no such waiver may be permitted for any project which could have an adverse effect on rare wildlife species.
  - (4) The Commission may impose additional conditions in granting a permit pursuant to this Section, as deemed necessary or desirable to protect the wetland values of Chapter 172. Said conditions may include (but are not limited to) imposing limits on project size or effect, or requiring other compensatory measures, such as wetland

replication, wildlife habitat enhancement and pollution attenuation measures.

- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this chapter; and where no conditions are adequate to protect those values.
- C. Unless a certificate of compliance is issued, a permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any order of conditions may be extended an additional three (3) years through the filing of a request for an Extension of Order of Conditions (WPA Form 7), provided that a request for renewal is received in writing by the Commission prior to the original date of expiration. Approval of permit extension requests shall be at the discretion of the Commission.

**History: Amended 5-4-2015 ATM, Article 23, approved by Attorney General 8-11-2015**

1. a written request for renewal is received at least thirty (30) days prior to the expiration date of the original permit (issued under Chapter 172);

and that the Commission finds that:

2. delays in initiating or completing the originally permitted work were unavoidable (including, but not limited to, appeals or inability to obtain other, applicable permits);
3. current information indicates that the provisions of the original permit remain adequate to protect wetland values of Chapter 172. The Commission may, if it deems it necessary, require updated plans and/or other information to make this determination;
4. permitted incomplete work meets the current provisions and regulations of Chapter 172 (as in effect at the time of the receipt of the written request for renewal);
5. incomplete work is not causing damage to the wetland values of Chapter 172;
6. work already completed is in compliance with the provisions of the original permit.

**History: Amended 5-5-2003 ATM, Article 17, approved by Attorney General 8-27-2003.**

- D. For good cause the Commission may revoke or modify a permit issued under this chapter after public notice and public hearing and notice to the holder of the permit. The time requirements specified in §172-5 shall be applicable.
- E. The Commission, in an appropriate case, may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.
- F. The Commission shall require that a permit issued hereunder (an Order of Conditions) be recorded in the Registry of Deeds, or, if the land affected thereby be registered land, in the registry district of the Land Court for the district wherein the land lies. The work proposed in said Order of Conditions shall not begin until the holder of the Order of

Conditions provides documentation in a form prescribed by the Commission as proof that said Order of Conditions has been recorded.

**History: Amended 10-3-94 ATM, Article 20, approved by Attorney General 1-18-95**

G. Certificate of Compliance

**History: Amended 10-3-94 ATM, Article 21, approved by Attorney General 1-18-95**

1. Upon completion of the work performed under an Order of Conditions, the holder of the permit shall forth-with request in writing that a Certificate of Compliance be issued, stating that the work has been satisfactorily completed. Said Certificate of Compliance shall be processed and issued in conformity with the provisions as noted in 310 CMR 10.05 (9) (a) through (f). No new permit shall be issued for any project on a property with respect to which a Certificate of Compliance has not been issued for an outstanding Order of Conditions.

**History: Amended 10-15-2012 ATM, Article 12, approved by Attorney General 11-9-2012**

2. Before any sale of property that is under the jurisdiction of a Chapter 172 Order of Conditions, the holder of said permit must either request and receive a Certificate of Compliance (as per the provisions of 1, (above) or request that the permit will be in the name of the new property-owner.
3. Failure to carry out the provisions of Chapter 172, §7-G(2), above, shall constitute a violation of Chapter 172 and be subject to penalty as per the provisions of §11.F of Chapter 172.

**§172-8 Promulgation of Regulations:**

After a public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter and may, from time to time, amend them. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

**§172-9 Definitions:**

- A. The following definitions shall apply in the interpretation and implementation of this chapter:

**ALTER** - Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter, as defined in §172-2:

1. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
2. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood-retention characteristics.
3. Change of drainage or other disturbance of water level or water table.
4. Dumping, discharging or filling with any material which may degrade water quality.
5. Driving of piles, erection or exterior repair of buildings or structures of any kind.
6. Placing of fill.

7. Placing of obstructions of objects in water.
8. Destruction of plant life, including cutting of trees.
9. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
10. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
11. Application of pesticides or herbicides.

**PERSON** - Includes any individual, group of individuals, association, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

- B. Except as otherwise provided in regulations promulgated by the Commission, all other definitions shall be as set forth in MGL C. 131, §40, and in Wetlands Protection Act Regulations promulgated by D.E.Q.E. pursuant to MGL C. 131, §40.

#### **§172-10 Security:**

As part of a permit issued under this chapter, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one (1) or more of the methods described below:

- A. By a proper bond with sureties satisfactory to the Commission payable to the Town or deposit of money or negotiable securities to be held by the Town Treasurer or other undertaking of financial responsibility sufficient in the opinion of the Commission to secure compliance with the order of conditions. Such bond or deposit shall be released upon issuance of a certificate of compliance.
- B. By a conservation restriction, easement or other covenant enforcement in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. A certificate of compliance may extinguish any such restriction, easement or other covenant.

#### **§172-11 Enforcement; Violations and Penalties:**

- A. The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make a cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the Town Counsel/Board of Selectmen shall take legal action for the enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for the enforcement under criminal law.

- D. Municipal boards and officers, including any police officers or other officers having police powers, shall have authority to assist the Commission in enforcement.
- E. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than three hundred dollars (\$300). Each day a portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violation shall constitute a separate offense.
- F. As an alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL C. 40, §21D, and the Commission may establish, by regulation, a penalty schedule for violation of this chapter, with no penalty to exceed three hundred (\$300). The Conservation Commission Agent is empowered to take cognizance of any violation and to enforce the same by noncriminal disposition as provided for herein  
**History: Added 11-13-1989 STM, Article 33, approved by Attorney General 2-16-1990.**

**§172-12 Burden of Proof:**

- A. The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter. Failure to provide evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
- B. The Commission is authorized to require the applicant to pay the reasonable costs and expenses borne by the Commission (Town) for specific expert engineering and consultant services deemed necessary by the Commission to review the notice of intent and/or the request for determination of applicability. Said payment can be required at any point in the deliberations prior to a final decision being rendered. Said services may include, but are not limited to, wetland resource area surveys and delineations, wetland resource area reports, hydro geological and drainage analysis, wildlife evaluation, shellfish surveys and environmental/land-use law. The Commission is hereby authorized to charge for said fee when the notice of intent and/or the request for determination of applicability proposes any of the following:  
**History: Amended 5-4-2015 ATM, Article 24, approved by Attorney General 8-11-2015**

five hundred (500') square feet or greater alteration of a coastal or inland wetland resource area;

fifty (50') linear feet or greater of bank alteration to an inland or coastal waterway;

five hundred (500') square feet or greater alteration to the buffer zone;

alteration of greater than five hundred (500') square feet of land under a water body or the ocean;

discharge of any pollutants into or contributing to surface or groundwater or the wetland resource area or water control structure.

Said fee shall be paid by the applicant to the Town of Mashpee. Any unused portion of said fee shall be returned by the Commission to the applicant within forty-five (45) calendar days of written request for the same by the applicant, unless the Commission decides in a public meeting that other action is necessary. Any applicant aggrieved by

the imposition of or the size of the fee or any act related thereto may appeal according to the provisions of Massachusetts General Laws.

**History: Added 5-7-1990 ATM, Article 38, approved by Attorney General 10-15-1990.**

**§172-13 Relation to Wetlands Protection:**

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, MGL C. 131, §40, and regulations thereunder.

**§172-14 Appeal Procedure:**

Any applicant, owner or abutter, any person aggrieved, or any ten (10) residents of Mashpee, may appeal an order of the Commission under this bylaw to the Superior Court of Barnstable County within sixty (60) days following the date of issuance of the order. However, if an appeal has been made to the Southeast Regional Office of the O.E.E.A. or Office of Energy & Environmental Affairs, then said appeal period commences upon the date of issuance of a superseding order from O.E.E.A. and shall continue for no more than sixty (60) days from that date (even though a further appeal has been made for a final order of conditions before an adjudicatory hearing).

[NOTE: Appeals must be made within ten (10) days of the Commission's decision to the O.E.E.A. as set forth in 310 CMR 10.05(7). The sixty (60) day appeal period under the local bylaw will be tolled (suspended) during this period of appeal for the superseding order.]

**History: Added 5-6-1991 ATM, Article 20, approved by Attorney General 10-15-1990.<sup>1</sup>**

**§172-15 Severability:**

The Invalidity of any section or provision of this Chapter shall not invalidate any other section or provision thereof.

## **CHAPTER 173 – CONSERVATION LANDS**

**History: Adopted by the Town of Mashpee: Art. I, 5-6-1991 ATM, Article 19, approved 7-3-1991.**  
**Amendments noted where applicable.**

### **GENERAL REFERENCES**

**Conservation Commission - See Ch. 5, Art. VI**

**Wetlands - See Ch. 172**

**Zoning - See Ch. 174**

## **ARTICLE I – General Provisions**

**§173-1 Purpose:**

The purpose of this Chapter is to protect environmental values on Mashpee conservation lands. These lands are defined to mean lands owned by the Town of Mashpee and/or lands administered by the Mashpee Conservation Commission or water rights, conservation restrictions, easements or other contractual rights, including conveyances on conditions or with limitations or revisions, which have been acquired by the Conservation Commission. The Commission is authorized to adopt rules and regulations governing the use of land and waters under its control for the protection, promotion and development of water supply, groundwater, flood control, erosion and sedimentation control, for the prevention of water pollution, for the protection and preservation of fisheries, shellfish, recreational values, wildlife and wildlife

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<sup>1</sup> Editor's Note: This bylaw also provided for the renumbering of former § 172-14 as § 172-15.

habitat and for the providing of open spaces in land and water areas and for all other purposes as provided for in MGL C. 40, §8c.

**History: Amended 10-4-1993 ATM, Article 31, approved by Attorney General 10-18-1993.**

**§173-2 Procedure:**

The Conservation Commission is authorized to adopt rules and regulations pursuant to this Chapter and to make amendments thereto from time to time as deemed necessary. A public hearing shall be held, pursuant to public notice given at least fourteen (14) days prior to the date of hearing. The notice shall be published in a newspaper of general circulation in the Town and shall inform residents that a public hearing is to be held and that a copy of any proposed rule or regulation or amendment thereto is available for inspection at the office of the Town Clerk and Conservation Commission. Any rule and regulation or amendment thereto shall not become effective until notice and hearing and until the same is adopted by vote of the conservation Commission and publication of notice of the rule and regulation in a newspaper of general circulation in the Town.

**§173-3 Violations and Penalties:**

The Conservation Commission may prescribe penalties for violation of any rule and regulation adopted pursuant to this Chapter. Any such penalty shall be a part of the rule and regulation and shall be adopted pursuant to the procedural requirements set forth in this Article. The Conservation Commission may establish a schedule of fines, not to exceed three hundred dollars (\$300) per incident, for any violation of the rules and regulations promulgated hereunder. Such penalties shall be recovered by indictment or on complaint before the Barnstable District Court or by noncriminal disposition in accordance with MGL C. 40, §21D. Any fines so recovered shall inure to the Mashpee Conservation Fund account of the Town of Mashpee.